

MONTANA LEGISLATIVE HISTORY

Chapter 513 19 23

Bill H _____ S 109 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Feb 19 ☒ C

Mar 06 ☒

Mar 07 ☒

Mar 08 ☒

Mar 09 ☒

Feb 26 ☒ C

Mar 01 ☒ C

Mar 05 ☒ C

Date Out Mar 10 ☒ C

S. Committee on Judiciary

Hearing Date(s) Jan 24 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Jan 24 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Joint Conference Committee

Mar 19

SENATE JUDICIARY COMMITTEE---January 24, 1973

The committee was called to order by Chairman, Luke McKeon. All members were present. The only bill discussed was SB 109. Proponents who spoke were:

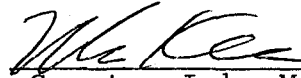
- (1) Prof. Larry Elison, UM Law School
- (2) Judge Castles
- (3) Prof. Crowley, UM Law School
- (4) John Frankino, Catholic Conference--Mr. Frankino also suggested some minor amendments which are attached to the record.
- (5) Conrad B. Fredericks, Attorney, Big Timber
- (6) Larry Stimatz, Attorney, Butte
- (7) Jack Lynch, Montana Catholic Conference, Great Falls
- (8) Roderick Gudgel, Mont. Pharmaceutical Assoc.

The above men spoke with reference to and explained the Revised Proposed Montana Criminal Code of 1973.

Senator Gilfeather moved that SB 109 do pass; Senator Hall Seconded; and the committee unanimously voted that SB 109 DO PASS.

The Chairman read two letters into the minutes: Robert J. Brooks and Chester L. Jones--both are attached to the minutes.

Attachments



Senator Luke McKeon, Chairman

Robert J. Brooks

Attorney At Law

COUNTY ATTORNEY
Powder River County
Telephone 436-2365

January 22, 1973

Box 345
BROADUS, MONTANA
59317

Senator Luke McKeon
Chairman
State Judiciary Committee
Capitol
Helena, Montana 59601

Dear Senator McKeon,

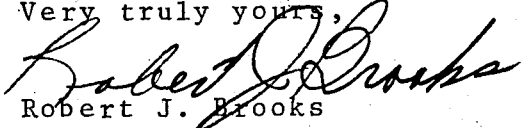
Thank you for inviting me to the hearing on Senate Bill
109. I appreciate the courtesy, and only wish my schedule
allowed attendance.

There are a few weaknesses in the bill as written, although
on a whole the criminal code is an improvement over our present
code.

The bad check law (94-6-309) has some serious problems,
for example, what if (as is often the case) the offender refuses
to take written notice of a bad check from the mail? There
should be included a presumption that refusal to accept the five
day notice is the same as acceptance.

The negligent homicide Section (94-5-104) does not adequately
solve the problem of motor vehicle homicide. What kind of negli-
gent act in driving a car would be homicide? The commissioners
comment seems to try to solve this problem, but not satisfactorily.
I would suggest a separate, clear statute dealing with motor
vehicle homicide such as California has. This would take a great
burden off the County Attorney.

Very truly yours,


Robert J. Brooks

RJB:ek

CHESTER L. JONES
COUNTY ATTORNEY

OFFICE OF THE
COUNTY ATTORNEY
MADISON COUNTY
VIRGINIA CITY, MONTANA 59755

TELEPHONE
843-5413
AREA CODE 406

January 22, 1973

Honorable Luke McKeon
Montana State Senate
Helena, Montana

File: State Legislation '73

Dear Senator McKeon:

I want to take this opportunity to commend the presentation under Senate Bill No. 109 of the new Montana Criminal Code.

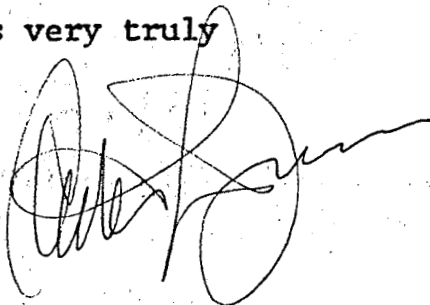
I have read the document in some detail with particular attention to those offenses most frequent in my jurisdiction.

I feel that the code as a whole represents a solid advance in the criminal law process and will assist efficient administration of law enforcement throughout the state.

As with all codifications, any one individual may find certain weaknesses in the terminology or concepts but these are so far outweighed by the benefits in this bill that I believe the criminal code should be adopted by our Legislature.

Yours very truly

CLJ:ee
cc: Senator Frank Hazelbaker

A handwritten signature in dark ink, appearing to be "Frank Hazelbaker", written in a cursive style with a large loop at the end.

CRITICISMS AND RECOMMENDATIONS OF THE REVISED PROPOSED CRIMINAL CODE OF
1973 BY THE MONTANA CATHOLIC CONFERENCE

* * *

After a special subcommittee of the Montana Catholic Conference undertook a thorough study of the Revised Proposed Montana Criminal Code of 1973 and made its findings known to the Board of Directors of Montana Catholic Conference, the Montana Catholic Conference submits the following criticisms and recommendations with respect to the Proposed Code:

I.

Pages 10-11, lines 25 and 26 (General Definitions) reads:

"(22) 'Human Being' means a person who has been born and is alive."

CRITICISM: Nowhere else in statutory law is the term "human being" defined. This particular definition is outdated and unnecessary.

a) It is exactly the same definition which is found in ancient Roman law: "persona est natus et vivus" - which was based on biology which has long since been superseded. In the last 15 to 20 years, courts have broadened their understanding of "human being" before the law, basing their conclusions upon developments in genetics and modern biology.

b) Should the criminal law contain this definition of "human being" there is reason to believe that our courts would use this definition as a precedent in other areas of the law, and it must be conceded that this dated definition being used in other contexts would be undesirable.

RECOMMENDATION: Delete the definition of "human being" pages 10-11, lines 25 and 26. In order to avoid any possible ambiguity in the criminal homicide section on page 40, substitute in lieu of the words "human being" at line 7, the following language:

". . . person who has been born and is alive . . . "

III.

Pages 7 through 22, Section 94-2-101, (General

Definitions) (Entire Section)

CRITICISM: As the definition section now stands, it is nearly impossible to find where the words or phrases defined therein are used in the substantive part of the Code.

RECOMMENDATION: Add a comment to the section stating where each of the particular definitions are used, and cross-reference each offense to section 94-2-101.

IV.

Page 47, line 3

Page 46, line 24 to / (Indecent Exposure) reads:

"(1) A person, who for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure."

CRITICISM: R.C.M. 1947 Sec. 94-3603(1) provides as follows:

"Every person who wilfully and lewdly either:
1. Exposes his person, or the private parts thereof, in any public place or in any place where there are other persons present to be offended or annoyed thereby; . . . is guilty of a misdemeanor."

The proposed section changes the present law by adding the following specific intent:

"For the purpose of arousing or gratifying sexual desire of himself or of any other person other than his spouse."

It is believed that it would be more desirable to retain the traditional language and intent so that the offense is based more on its effect on the public than upon the subjective intent of the actor. In addition, the proposed section is limited to only exposure of the genitals.

RECOMMENDATIONS: In lieu of the language contained in paragraph (1) of the section, the following language should be substituted:

"A person who exposes his sexual or other intimate parts under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure."

V.

Page 57, lines 17 to 20 (Negligent Arson) reads:

"If the offender places another person in danger of death or bodily injury, he shall be imprisoned in the State prison for any term not to exceed 10 years."

CRITICISM: Since the mental state required is negligence, a felony penalty should not be attached.

RECOMMENDATION: Delete the last sentence of the section beginning on line 17, page 57.

VI.

Page 93, Sec. 94-7-502, Desecration of Flag (Penalty).

CRITICISM: The penalty (lines 16 through 18, page 94) is one of not to exceed 10 years in the State Prison. This penalty is too inflated for the type of social conduct involved.

RECOMMENDATION: Reduce the penalty to the original proposal of "fined not to exceed \$100.00 or be imprisoned in the County Jail for a term not to exceed 10 days, or both."

Page 113, Section 95-719. Stop and Frisk.(Entire Section),

CRITICISM: Aside from the fact that this kind of a police procedure is not needed in Montana, there is a possibility that it will give the authorities license to harrass minorities and unpopular groups. In addition, there is some question as to its constitutional validity.

RECOMMENDATION: Delete this section.

IX.

Page 116, lines 17 through 13 (Sentence of Imprisonment for Persistent Felony Offender) reads:

"(2) A persistent felony offender shall be imprisoned in the State prison for a term of not less than five (5) years nor more than one hundred (100) years providing:

(a) the previous felony conviction was for an offense committed in this State or any other jurisdiction for which a sentence of a term of imprisonment in excess of one year could have been imposed;"

CRITICISM: This is inconsistent with the proposed Section 94-1-105 wherein it is stated in the comment that "this section makes it clear that the actual sentence imposed upon conviction determines the classification of the offense." Thus, a person who has been previously given a one-day sentence on a potential felony, commits another felony on a different occasion, is subject to a sentence of not less than five (5) nor more than one hundred (100) years in the State prison.

In addition, the mandatory minimum removes the discretion which a sentencing Judge otherwise has on all the offenses contained in the Criminal Code.

RECOMMENDATION: Paragraph (2) on page 116 be amended as follows:

"(2) a persistent felony offender shall be imprisoned in the State prison for a term not to exceed one hundred (100) years providing:

(a) the previous felony conviction was for an offense committed in this State or any other jurisdiction for which a sentence to a term of imprisonment in excess

VISITOR'S REGISTER

[illegible]

J U D I C I A R Y

Senate Committee

Date

1/24

Bill No.

5109

Time

4:30

Y

N

McKeon	☒	☐
Gilfeather	☒	☐
Boylan	☒	☐
Hall	☒	☐
Zody	☒	☐
Drake	☒	☐
Harrison	☒	☐
Moore	☒	☐
Turnage	☒	☐

M. J. Rice

Mary Jane Rice, Secretary

Senator McKeon, Chairman

Motion:

DO PASS

February 19, 1973

JUDICIARY COMMITTEE

The thirty fifth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Monday, February 19, 1973 at 7:30 p.m. Representative John C. Hall, Chairman, presided. All members were present except Representative Marbut, absent, excused.

SENATE BILL 109 Chairman Hall opened the meeting stating the committee has as bill for consideration Senate Bill 109 and that notice was also given on House Bill 38 which will be deferred until discussion on Senate Bill 109. HB 38 is Representative Brand's proposal on habitual offender code and action previously deferred on this because thought would incorporate HB 38 into Senate Bill 109.

Senator Jean A. Turnage, District #17, chief sponsor, summarized this bill stating it is the product of ten years of study of the Criminal Law Commission which was created by legislature in 1963. Had hoped it would not be necessary to amend bill but feels there is one amendment which will be necessary in relation to abortion section. Had prepared statement of amendments which was given to each committee member.

Proponent Judge Wesley W. Castles stated commission members were appointed in 1963 following creation of commission. Commission consisted of one supreme court judge, three district judges and seven lawyers. Judge Castles explained the procedure followed by the commission in writing the criminal codes which by 1967 had drafted a criminal procedure act which with two or three minor amendments in 1969 has served well. Commission then turned to substantive part. This proposed in 1970 and green book printed and circulated to judges and lawyers throughout Montana. In December, 1970, decided not to submit to 1971 legislative session and to wait until this session. Senator Turnage had some strong criticism and offered changes to the commission which he feels have not been worked out. Went through green book and explained it and stated few corrections and changes in Senate Bill 109 from the green book. Assume legislature will pass this and the governor will sign it. Assume effective date of January 1, 1974 following which the Supreme Court intends to carry on seminars with the bench, bar and judges as the commission would then be dead.

Proponent Professor Larry Ellison, University of Montana Law School, explained the structure of the criminal code and stated the commission has attempted to make it workable and useful in structured way.

Proponent Professor Crowley of University of Montana Law School stated the commission tossed out old language which is well over one hundred years old and have attempted to make broad general definitions of conduct rather than nit picking. Codes of a number of states have been drawn from, particularly state of Illinois codes.

Proponent Judge Wesley Castles stated that Senate Bill 109 is split into thirty three sections and proceeded to explain each section. He then introduced Mr. Terry Cosgrove, a law clerk, who has worked for criminal law commission and is thoroughly familiar with the bill and suggested Mr. Cosgrove be asked to help in writing amendatory language to be sure it is the same as the term definition.

Fred A. Johnston, Great Falls attorney, proposed some amendments and stated he does not oppose legislation. Feels members of commission have done a tremendous job and wants only to change a very small area of law dealing with trespassing. Stated proposed code assumes consent and puts burden to stay off to owner to post notice and patrol land. Prefers law be that whoever wishes to use land of another solicit consent. Discussed effect of "things" upon land of another. Suggested on page 58, line 23 amend after the word "who" by inserting the new material "on foot".

Chairman Hall then stated that questions committee might ask tonight might well be answered by reading the bill but will not rule out any questions. Chairman Hall stated the committee would again take up the bill for discussion among committee members to include questions to proponents of bill on Monday evening, February 26, 1973.

Representative Towe had several questions regarding how the commission arrived at statute for desecration of flags, section relating to sale of contraceptives and the obscenity section in which he feels there are substantial problems. Representative Hall questioned whether we have made it impossible to have criminal provisions with the new constitution.

Prepared statement was presented by Mr. Terry Cosgrove.

All business being concluded, the meeting adjourned at 8:50 p.m.


JOHN C. HALL, CHAIRMAN



MONTANA CRIMINAL LAW COMMISSION

M.S.U. LAW SCHOOL, MISSOULA, MONTANA

January 12, 1973

CHAIRMAN

HON. WESLEY CASTLES
ASSOCIATE JUSTICE, SUPREME COURT
HELENA, MONTANA

SECRETARY

LOUIS FORSELL, ESQ.
ASSISTANT ATTORNEY GENERAL
HELENA, MONTANA

MEMBERS

HON. ROBERT J. NELSON
DISTRICT JUDGE
GREAT FALLS, MONTANA

HON. W. W. LESSLEY
DISTRICT JUDGE
BOZEMAN, MONTANA

HON. E. GARDNER BROWNLEE
DISTRICT JUDGE
HAMILTON, MONTANA

RUSSELL K. FILLNER, ESQ.
COUNTY ATTORNEY
FORSYTH, MONTANA

WILLIAM F. CROWLEY, ESQ.
DEPUTY COUNTY ATTORNEY
HELENA, MONTANA

M. DEAN JELLISON, ESQ.
ATTORNEY AT LAW
KALISPELL, MONTANA

CHARLES F. MOSES, ESQ.
ATTORNEY AT LAW
BILLINGS, MONTANA

JOHN M. MCCARVEL, ESQ.
ATTORNEY AT LAW
GREAT FALLS, MONTANA

PROF. LARRY M. ELISON
SCHOOL OF LAW, M.S.U.
MISSOULA, MONTANA

PROF. EDWIN W. BRIGGS
SCHOOL OF LAW, M.S.U.
MISSOULA, MONTANA

Hon. Jean A. Turnage
Hon. Luke McKeon
Senators
43rd Legislative Assembly
Helena, Montana

Dear Senators:

This letter accompanies a copy of the Revised Proposed Montana Criminal Code of 1973, with some additional information which might be helpful to you. The bill copy of the proposed code has some additional changes in it, which were not made at the time the proposed code was printed last spring. I have listed for you the additional changes that have been made.

1. Section 94-1-109 - Compelling Testimony: Immunity from Prosecution. This proposal has been placed in the criminal procedure proposal, and has been removed from Title 94, its new number is 95-1807.

2. There have been some changes made in section 94-2-101, the general definitions section:

a. subsection (1) Acts, has a somewhat different definition than in the bound green volume;

b. subsection (28) Knowingly, had a typo and line 116 on page 12 should be omitted;

c. subsection (62) Tamper, has an addition to it, at the end of the sentence a clause was inserted which reads: "or deposit refuse upon it".

3. Two new sections have been added which are not in the proposed code, they are 94-2-110, Substitutes for Negligence and Knowledge, and 94-2-111, Consent as a Defense. The present sections number 94-2-110 and 94-2-111 are kept but they have been renumbered 94-2-112 and 94-2-113, respectively.

4. Section 94-5-101 - Criminal Homicide has been changed to read as follows:

"(1) A person commits the offense of criminal homicide if he purposely, knowingly or negligently causes the death of another human being.

"(2) Criminal homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide."

Page 2

Joint Conference Committee Report to Senate Bill No. 109 (cont'd)

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the fifth full paragraph,

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the sixth full paragraph,

And that as so amended Senate Bill No. 109 be concurred in.

NAME Fred A. Johnston BILL No. SB 109
ADDRESS Box 13028 DATE 2/19/1973
Great Falls, Mt. 59403
WHOM DO YOU REPRESENT? Self

SUPPORT? _____ OPPOSE? _____ AMEND? X

Sec. 94-6-201

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

add on line 23, page 58, after
"a person who" the words "on foot"

February 26, 1973

JUDICIARY COMMITTEE

The forty first meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Monday evening, February 26, 1973 at 7:40 p.m. Representative Dan V. Yardley, vice-chairman, presided. All members were present except Representatives Hall, Greely and Warfield, absent, excused.

Acting Chairman Yardley opened the meeting stating that Representative Hall had set tonight as the second meeting on Senate Bill 109. This meeting was set primarily as opportunity for committee members to ask questions of witnesses who testified at previous hearing on Senate Bill 109 on Monday evening, February 19, 1973.

Robert J. Campbell, attorney in Missoula, and currently a public official for Constitutional Convention, testified in support of Senate Bill 109 and proposed several amendatory changes to the criminal codes (see attached exhibit of prepared statement). Following testimony of Mr. Campbell the meeting was opened to questions from the committee. Many questions were asked by committee members including questions regarding 94-5-503, section 3 on statutory rape; section on treason; death penalty, desecration of the flag; obscenity, 94-8-110; stop and frisk; vagrancy statute; prostitution; problem of extradition. It was pointed out that now, under new criminal codes, have sentence review board of three other judges in case judge got out of bed on wrong side and overshot his "maximum sentence" power.

Those present at meeting as witnesses and to answer questions included Judge Wesley W. Castles, County Attorney Thomas L. Dowling, Judge Meloy, Professor Larry Elison and Mr. Terry Cosgrove of the Criminal Code Commission, and William F. Crowley from the University of Montana, also a member of Criminal Law Commission.

All business being concluded the meeting adjourned at 8:50 p.m

DVY:pb


DAN V. YARDLEY, VICE-CHAIRMAN

TESTIMONY ON REVISED PROPOSED MONTANA CRIMINAL CODE OF 1973

SENATE BILL 109, BEFORE HOUSE JUDICIARY COMMITTEE

JOHN C. HALL, CHAIRMAN

February 26, 1973

Helena, Montana 59601

My name is Robert J. Campbell, Attorney at Law, Missoula, Montana, a public official currently serving as an elected Constitutional Convention delegate assigned to the Bill of Rights Committee where 7 of my proposals were adopted in the new Constitution and will be effective July 1, 1973. I would like to discuss the impact of two of these sections of the new Bill of Rights Article II and these are Section 7 Freedom of Expression, and Section 10 the Right of Privacy.

I must first state that the Montana Criminal Law Commission should be congratulated for the thousands of ~~hours~~ expended to improve our criminal laws, they did propose a criminal code which does eliminate many of the unnecessary and objectionable statutes found under the present code adopted in 1895. It would indeed be a tragedy if the new criminal code is not adopted but I do have some suggestions as to how it can be improved in such a manner as to avoid future problems with the few remaining sections which, unless removed, will unnecessarily burden our courts that are already over crowded and congested with more important matters.

The Montana Criminal Law Commission did not have the benefit of writing its proposed code in view of the new Bill of Rights which becomes effective at the same date as this suggested criminal code and as a result there are several sections which are either unnecessary because of the current Federal law and United States Supreme Court Decisions or are unconstitutional under Sections 7 and 10 of Article II in the new Constitution.

The Senate was correct in passing the entire code as is to allow your committee to hold public hearings and make the necessary amendments for referral back to the Senate committee for final confirmation. It is altogether fitting and proper that they should do this since they have more than their share of difficult questions attempting to solve the problem of women. No male legislature in the past, present or future will ever solve that particular problem and I certainly appreciate the difficulty of their dilemma.

Montana by being part of the United States subjects our citizens to the federal criminal law imposed on all American citizens as a means of controlling antisocial behavior. Because of the adequate federal laws now in effect it is both unnecessary and unwise to include in the new Montana criminal law proposed sections, 94-7-502 and 94-7-501.

The first section 94-7-502 is patterned after the current federal law enacted only recently on July 5, 1968 for the proposed of controlling the dissenter who would publicly defile the United States Flag during the most destructive National Nominating conventions our nation has ever known. It may or may not have served its original purpose by imposing a one year prison sentence or a thousand dollar fine, but it still covers such acts of any person within ^{our} ~~the~~ state criminal statute with the proposed ten year sentence would be unwise because of its exceptionally broad language making it selectively enforceable at the worst. If enforced to the letter of this law thousands of our otherwise abiding Montana citizens would be criminals for proudly displaying the Stars and Stripes on an unbelievable number of commercial items now not available. Nothing promotes disrespect for the law more than your passing criminal laws which are unnecessarily broad for selective enforcement against a few while many others are burdened with the knowledge that their actions are ~~considered~~ criminals.

A good Federal or State government doesn't need a criminal law to command respect for the flag and a bad government could not

and should not be supported. This was pointed out in a recent editorial in The Missoulian attached as exhibit "A" which also contains the statement of Missoula County Sheriff John Moe, former FBI agent, that he sees little need for the statute in the new proposed code since it is already covered by Federal law. Also a Montana Kimain editorial pointing out some of the practical problems of such a statute if enforced literally.

The same is true of proposed section 94-7-501 concerning the crime of treason. It has been said by James Wilson who was a delegate to the Constitutional Convention in Philadelphia in 1887 that:

It is an old trick of tyrants wilfully to extend the definition of treason thereby gaining power over the people. The statutes of Edward the Third were at a point where the highest treason was to imagine the death of the king. What is loyalty on Monday might well be treason on Tuesday.

The Federal provisions in 18 USCA 2381 are more than adequate to cover the crime of which has the same definition with the penalty being not more than death nor less than 5 years in prison or a \$10,000.00 fine. Its provision of giving aid and comfort to the enemy in times of war is more than sufficient to apply to our Montana citizens and as a state we are not likely to declare war on any neighboring state or province. Short of a declaration of war by the state of North Dakota for our shameless perversion of Polack jokes, the state may rest secure. The proposed provision is unnecessary and the fact that the proposal contains the longest possible prison term of 100 years makes it even more objectionable.

Concerning statutes of doubtful constitutionality under the United States and the new Montana Constitution we have four that you should remove from the proposed code. No one has appeared to argue that prostitution is a major problem in Montana in spite of the fact there is presently no state statute making a prostitute a criminal. The only criminal statutes we have under the present code

make houses of "ill-fame" a crime and as we all know that such houses of "ill-fame" are now so famous that they are owned by some of the most respected people in the community. The proposed Section 94-5-602 by making the prostitute a criminal for the first time in Montana history is unwise, unnecessary and unconstitutional. The Right of Privacy in Section 10 requires the State to carry the burden of proving to a unanimous jury that there is a compelling state interest in invading the individual privacy to make a person a criminal. In light of the recent United States Supreme Court decision placing abortion within the right of privacy, what possible compelling state interest can you allege to be present in making criminal the private act of two consenting adults? The criminal law should stop where the bedroom begins and the inclusion of a new victimless crime in the state of Montana is the last thing we need.

Likewise this applies to proposed Sections 94-5-603 and 94-5-505.

Proposed Section 94-8-110 entitled "Obscenity" must be viewed in the light of the new Constitution's Section 7 "No law shall be passed impairing the freedom of speech or expression" and Section 10 the Right of Privacy, which places the burden upon the State to show a compelling state interest before invading individual privacy. The 1970 proposal was much preferable to the present 1973 proposal in that Section 1(a), (b), (c), (d) and (e) all include the words "anyone under the age of eighteen (18)" and if there is any argument as to why a statute like this should exist it is the argument that such material should be kept out of the hands of those less than the age of majority. The proposed 1973 code does not say why it omitted the original intent of protecting the youth and states an unconstitutional prohibition against any such material in the hands of any citizen.

On April 7, 1969, the United States Supreme Court in the case of Stanley vs. Georgia, 394 US 557, 89 S. Ct. 1243 (Exhibit B) held that the first Amendment to the United States Constitution, as made applicable to the States by the Fourteen Amendment, prohibits a State from making

mere possession of obscene material a crime. Again, our Section 10 Right of Privacy restates that and expressly protects free expression and the statute as proposed is clearly unconstitutional both under the United States Supreme Court interpretation of the First Amendment and under the new Montana Constitution Article II Section 7. To avoid the later Court challenges which undoubtedly will follow if this provision is adopted you should amend this Section to include "anyone under the age of eighteen (18)" as originally proposed by the Commission or face an inevitable Court suit which will invalidate the entire Section and present no protection for those under the age of 18 at all. The Section as proposed is unrealistic and as men and women who are sworn to uphold the Constitution of the United States as interpreted by the United States Supreme Court it is your duty to follow the law of the land. You must not pick and choose which laws You wish to follow any more than you tolerate others choosing which laws they should follow whether it be in opposition to a past war or disagreeing on an abortion decision.

I would like to comment on two of the proposed amendments to the Code of Criminal Procedure enacted in 1967. First the proposed Section 95-719 entitled "Stop and Frisk" is an unwise codification of the authority of the officer which already exists by case law. The great danger in cementing the present procedures into a statute is that it prohibits development of reasonable procedures which are unforeseen at this time. The placing of any time limit on an officer in stopping an individual under this Section presents more problems than it solves. You are raising the additional technical problems that the defense attorney will raise concerning the question of whether or not the arrest was made 31 minutes after the original stop or 29. What about the situation in which there are multiple people stopped at close intervals of time? Does the first time period begin with the first stop or does each additional defendant give the officer an additional 30 minutes in which to make a decision whether or not to arrest? Would you require an officer to carry a stop watch to insure that he

comes within your statute? I have yet to see a widespread need for such a provision and being unnecessary should not be adopted since it could be too easily abused if not confined within the narrow limits for which it is intended.

The final provision I would like to comment on is the proposed Section 95-206.1, the Death Penalty, which was inadvertently left out of the 1967 Code of Criminal Procedure and which in effect meant that Montana has not had the death penalty for the last 6 years.

The death penalty side issue in the election of June 6, 1972 was a question of whether or not to abolish the death penalty in the new Constitution or not to mention it at all. Since that vote not to abolish it in the new Constitution, the United States Supreme Court has abolished the death penalty as being cruel and unusual punishment. There is no doubt in my mind that this proposed section as written will never be enforced in this state and the present state of the law as it now stands with no death penalty should be continued.

SUMMARY

The entire Code is an improvement over the present Code and the Commission worked hard to suggest a significant improvement over the present archaic statutes which no longer apply to modern life.

Our past criminal law experience in this state and nation has proven to be a failure in those areas in which it has tried to control moral behavior by trying to force people to fit the laws. It is your duty as elected representatives to make the difficult decisions opposed by the vocal minority and to, for the first time in our state enact the criminal laws to fit the people.

You must not be intimidated by the minority who did not elect you and may express their opinions only on isolate issues which evoke an emotional response. The majority of Montana citizens want a progressive realistic criminal code which they can respect and which respects them.

You must enact laws which will be applied equally to all the people of our state and nothing promotes more disrespect for the law than your passage of criminal laws to be selectively enforced against

those who may not be in favor with those in power. Do not enact
a law that you do not want to apply to everyone^{and} using this guide
you will achieve the final goal set forth in the introduction of
this proposed Code and that is "to formulate a code of criminal
law that would be an effective instrument of social control."

Thank you, Mr. Chairman,

Bob Campbell

5. Section 94-6-611 - Intimidation, has been moved from the chapter on Offense Against the Family, and has been placed in the Assault section and numbered 94-6-203, there has been no change in any of the language of the section.

6. On page 63, in the section - Criminal Trespass to Vehicles, that section is numbered 94-6-202, not 94-6-602, as it is in the green volume.

7. Section 94-8-110--Obscenity, in subsection (2) line 4, the word "community" and the phrase "with respect to minors" are omitted. In subsection (3)(a) line 29, the words "of minors" should be changed to read "of recipients". Subsection (3)(c) line 32, the words "in the state", should be omitted.

8. On page 121 of the green volume, the section ---The Burden In a Homicide Trial, is numbered 95-3004, rather than the 94-7221 which it was numbered in the book.

Respectfully,

Terry Cosgrove

TC:jw

94-6-201 DEFINITIONS

"ENTER OR REMAIN UNLAWFULLY." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

The following section is found in section 1 of the bill on page 58, and the section will be amended by adding the following underlined words on line 24 after the word unless, to read:

"ENTER OR REMAIN UNLAWFULLY A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless he is hunting upon enclosed premises; or, he is injuring, damaging, or destroying property; and notice to keep out, do not hunt, or to leave is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner."

(The underlined material is the proposed change).

94-2-109 RESPONSIBILITY.

This is in section 1 of the bill on page 27, the section will be amended on line 6, by substituting the word "eighteenth" for the word "sixteenth". The section would then read:

"No person is capable of committing any offense unless he had attained his sixteenth birthday at the time the act in question was committed. Any person who has not yet attained his eighteenth birthday shall be subject to the law as provided in Title 10, Chapter 6, R.C.M. 1947."

(The underlined material is the proposed change).

In section 29 of the bill, page 148, the renumbering section, that section will be amended by deleting all of line 16 and line 17 through the number 94-5-612.

Section 32 of the bill will be amended by adding to the bill on line 5 page 159, after the number 94-306, the following: 94-401 through 94-402.

This will take the present abortion section and repeal it.

* *****

In section 31, 95-2206.4, When No Felony Penalty Is Specified, on page 158, an amendment will be added to that section on page 159, line 1: the number five (5) which appears after the word exceed, will be changed to ten (10).

Commanded by a Prison Term?

When a person is held in respect by others, the respect has to have been earned.

When a nation holds the respect of its citizens, that too has to have been earned. Certainly most Americans hold their nation in warm regard. Part of their love and respect for it stem from the freedoms the United States allows, including the freedom to point out faults on the nation's beloved visage.

If a man told his fellows, "You must respect me or I'll have you jailed," respect would die, instantly. Respect and love cannot be fostered or enforced by threats and punishments.

Occasionally some twerp desecrates the nation's flag. Most citizens, who love and respect the flag as the symbol of the country they love and respect, are disgusted by a desecration.

The instinct to rush to protect the flag and inflict punishment upon the desecrator is natural. So Congress in 1968 enacted a law against "... publicly mutilating, defacing, defiling, burning, or trampling" the American flag. A desecrator would be fined up to \$1,000, imprisoned for up to a year, or both.

And in Montana the proposed new criminal code would have flag desecrators imprisoned for up to 10 years.

The federal law defines the flag as pictures or representations which "... the average person ... may believe to represent the flag. ..." The proposed Montana law includes the state flag as well as the national, and bans placing or attaching "to the flag any word, mark, design, or advertisement not properly a part of such flag or (exposing) to

A federal court has held it wasn't a violation to wear a shirt which came within the statutory definition of a flag, nor was it a violation to wear flag buttons saying "Wallace for President, Stand Up for America," and "Vote Pig Yippie in Sixty-Eight."

The proposed Montana law clearly is aimed at persons who put peace or other symbols on the flag. Presumably the law would not be used to imprison persons who wore a button with a picture of Nixon, Wallace, Agnew, McGovern or other leading politician superimposed on an American flag, though that too would seem to be in violation of the proposed law.

This proposed law, if it is enforced at all, will be enforced selectively against the minority which the majority regards as freaks and outcasts.

The 1968 federal law requires public act of mutilating, defacing, defiling, burning, or trampling. The proposed Montana law could nab culprits who in private did something to the flag. And "flag" under the Montana law would include, in addition to the national and state flags, the U.S. shield, the U.S. coat of arms, "or a copy, picture, or representation of any of them."

Such a Draconian state law is neither necessary nor wise.

At a time when many courts are overburdened, it seems odd to make a law which would burden them further, with appeals to federal courts certain to follow. It seems un-American to aim a law at a specific element of society, as this proposed law does. It seems strange to enact a law which will create a problem where no discernible difficulty

Sheriff Sees Little Need For State Flag Statute

Missoula County Sheriff John Moe has said Montana probably doesn't need the stiff flag desecration statute proposed in the 1973 Montana Criminal Code before the state legislature

because of federal law.

Federal law should adequately cover the crime, Moe said at a panel discussion at the University of Montana Thursday evening.

The proposed state code sets a maximum penalty of 10 years for flag desecration.

Existing state law sets the penalty for this crime at one year in the county jail or five years in the state prison.

Moe was asked if he would object to the flag desecration provision being dropped from the proposed code.

"I think probably there is sufficient coverage under the federal law," Moe replied.

Moe was one of four panelists discussing the proposed code. The panel discussion was

sponsored by the University of Montana. The panelists were: Moe, Sheriff John Moe; Ch: Ch. Lit: Lit.



'It was designed as a flag, buddy
— not as a blindfold.'

now exists.

And it seems unwise to protect the Stars and Stripes from the antics of an occasional hothead. Respect for the flag is not created by or dependent upon punishments meted out by any government. Respect of country and its symbols is cheapened by threats; by the notion that true respect can be commanded by a prison term.

Montana Kuhn

The Code also demands due respect for the flag, which brings us to the related problem of flag decals on automobiles. What should be done when the President orders flags to be lowered? Closing the window with an attached flag decal down would be one solution, but many decals are not attached to movable windows. In these cases, it might be best to let half of the air out of the vehicle's tires.

Syllabus.

STANLEY v. GEORGIA.

APPEAL FROM THE SUPREME COURT OF GEORGIA.

No. 293. Argued January 14-15, 1969.—Decided April 7, 1969.

Under authority of a warrant to search appellant's home for evidence of his alleged bookmaking activities, officers found some films in his bedroom. The films were projected and deemed to be obscene. Appellant was arrested for their possession. He was thereafter indicted, tried, and convicted for "knowingly hav[ing] possession of . . . obscene matter" in violation of a Georgia law. The Georgia Supreme Court affirmed, holding it "not essential to an indictment charging one with possession of obscene matter that it be alleged that such possession was 'with intent to sell, expose or circulate the same.'" Appellant contends that the Georgia obscenity statute is unconstitutional insofar as it punishes mere private possession of obscene matter. Georgia, relying on *Roth v. United States*, 354 U. S. 476, argues the statute's validity on the ground that "obscenity is not within the area of constitutionally protected speech or press." *Id.*, at 485. *Held*: The First Amendment as made applicable to the States by the Fourteenth prohibits making mere private possession of obscene material a crime. Pp. 560-568.

(a) Neither *Roth, supra*, nor subsequent decisions of the Court were made in the context of a statute punishing mere private possession of obscene material, but involved governmental power to prohibit or regulate certain public actions respecting obscene matter. Pp. 560-564.

(b) The Constitution protects the right to receive information and ideas, regardless of their social worth, and to be generally free from governmental intrusions into one's privacy and control of one's thoughts. Pp. 564-566.

(c) The State may not prohibit mere possession of obscene matter on the ground that it may lead to antisocial conduct, *Roth, supra*, distinguished, or proscribe such possession on the ground that it is a necessary incident to a statutory scheme prohibiting distribution, see *Smith v. California*, 361 U. S. 147. Pp. 566-568.

224 Ga. 259, 161 S. E. 2d 309, reversed and remanded.

EXHIBIT "B"

LAW OFFICES OF
FRED A. JOHNSTON
409 STRAIN BUILDING
GREAT FALLS, MONTANA 59403

TELEPHONE 761-7300
AREA CODE 406

February 24, 1973

Judiciary Committee,
House of Representatives
Attention Hon. John C. Hall, Chairman
Helena, Montana 59601

Gentlemen:

At the committee hearing on January 29, I suggested that Section 94-6-201 of the proposed Montana Criminal Code (at page 58 of SB 109) be amended to make a distinction between a person who enters upon land of another by walking and one who enters in a vehicle. Perhaps it can be assumed that landowners are willing to permit persons upon the land if they walk, but, as I indicated at the hearing, I do not believe that it can be assumed that landowners wish persons to enter in snowmobiles, trailcycles, 4-wheel drive vehicles or ATV's. I also believe that the section should be amended to make it clear that a peace officer has authority to request a person to leave land.

The section, with the suggested amendments, would read as follows:

94-6-201. Definitions.

"Enter Or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who on foot enters or remains upon land does so with privilege unless notice to leave or to keep out is personally communicated to him by an a peace officer or other authorized person, or unless such notice is given by posting in a conspicuous manner.

At the hearing Senator Turnage suggested an amendment to Section 94-6-201, a copy of which is attached. I do not believe that these provisions are necessary for the following

reasons:

(a) If a person hunts on the land of another, he violates Section 26-303.3 of the Fish and Game laws.

(b) If he injures, damages, or destroys property, he will violate Section 94-6-102 (dealing with criminal mischief) of the proposed code.

Sections 26-110.1 and 26-110.2 refer to Sections 94-3308 and 94-3309, which will be repealed by Senate Bill 109 and replaced by Sections 94-6-102 and 94-6-203. Accordingly, I recommend that the following Sections be added to SB 109:

Sec. _____. Section 26-110.1, R.C.M. 1947, is amended to read as follows:

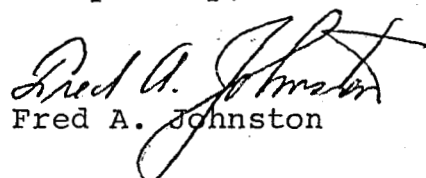
"26-110.1. Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections ~~94-3308~~ 94-6-102, ~~94-3309~~ 94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

Sec. _____. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections ~~94-3308~~ 94-6-102, ~~94-3309~~ 94-6-203 and 32-4410, R.C.M. 1947."

If the members of the committee would like any additional information, I would be glad to provide them with it.

Yours very truly,


Fred A. Johnston

94-6-201 DEFINITIONS

"ENTER OR REMAIN UNLAWFULLY." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

The following section is found in section 1 of the bill on page 58, and the section will be amended by adding the following underlined words on line 24 after the word unless, to read:

"ENTER OR REMAIN UNLAWFULLY A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless he is hunting upon enclosed premises; or, he is injuring, damaging, or destroying property; and notice to keep out, do not hunt, or to leave is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner."

(The underlined material is the proposed change).

March 1, 1973

JUDICIARY COMMITTEE

The forty fourth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Thursday, March 1, 1973 at 9:00 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representative Marbut, absent, excused and Representative McKittrick, absent, excused.

SENATE BILL 28 Amendments to bill as voted in by committee in executive session on Wednesday, February 28, 1973 were prepared in the form of a substitute bill and a copy provided to each committee member. Representative Lucas moved BE CONCURRED IN AS AMENDED. Representative Roberts seconded. Representative Lucas stated he felt the amendments were well prepared and was very satisfied with the substitute bill. The motion BE CONCURRED IN AS AMENDED carried with Representative Towe voting no.

SENATE BILL 109 Hearings were conducted on this new criminal code proposal on Monday, February 19, 1973 and again on Monday, February 26, 1973 with questions from the committee to proponents during the latter hearing. Chairman Hall inquired as to how the committee wished to proceed with this bill and stated his own feeling is that the bill should be acted on during this session. Chairman Hall stated he felt the criminal code commission had rather thoroughly worked on this bill and also that there will be areas in bill that need amending but that many won't be discovered until we live with this bill. Representative Lucas concurred with Representative Hall's opinion as did Representatives Towe and Bell also. Representative Greely stated he concurred with Representative Hall's opinion but will propose some amendments. Chairman Hall stated the committee will meet to act on this bill with due caution, circumspection and speed.

SENATE BILLS 80, 81 and 331 Chairman Hall inquired as to the pleasure of the committee regarding these no-fault insurance bills. Chairman Hall stated that Senator Luke McKeon, chairman, senate judiciary committee, expressed the opinion that it was the feeling of his committee that they wanted to defer action on these bills and the feeling was that they should take all the no-fault insurance bills and jointly work on them. Senate bills came over without any amendments. Representative Lucas moved that any senate bills on no-fault under consideration be postponed until 1974 session with work done jointly during the interim. Representative Yardley seconded. Discussion followed which pertained primarily to whether there were any understandings with the senate judiciary committee and whether to have joint judiciary committee meetings now on the no-fault bills. Representative Towe made a substitute motion to get together with the Senate Judiciary before passing the no-fault bills out of committee. Representative Brown seconded. Representative Yardley pointed out that the committee should attempt to follow the legislative time schedule and action on the no-fault bills now would make it almost impossible to follow the time schedule. Representative Towe's motion to have joint committee

meetings now failed. Committee reverted to Representative Lucas' motion that bill BE HELD OVER. Motion carried with Representative Roberts voting no.

SENATE BILL 109 Committee reverted back to this bill. Discussion followed regarding proposed amendments by proponents of bill which testified at hearings. Chairman Hall pointed out that there was a renumbering error on page 150, line 7 following the numbers "23-4759" and should be amended by deleting the incorrect numbers "94-1460" and inserting in lieu thereof the numbers "23-4760".

Representative Greely proposed that bestiality and homosexuality as crime be eliminated. Representative Greely stated the criminal code commission was very much in favor of eliminating bestiality and homosexuality as crimes for various reasons but, in order to eliminate much dissension, and since the vote was close, put it in. Discussion followed among committee members regarding the death penalty, desecration of flag, homosexuality and bestiality. Representative Hall stated he felt the sense of proportion bothered him and that there were more important issues to be considered in this bill. Representative Towe disagreed. Motion to amend bill to eliminate bestiality and homosexuality failed with Representatives Baucus, Greely, Roberts, Towe and Warfield voting yes.

Representative Roberts then came back to meeting with Mr. Terry Cosgrove and explained the authority and ability to help write amendments of Mr. Cosgrove.

Representative Greely moved to amend by making assault of law enforcement officers as was in the old code which has been resolved from the new code. Stated this has in past proved an effective control. Representative Lucas seconded motion. Following discussion vote was taken and the motion carried with Representatives Roberts, Baucus, Towe and Yardley voting no.

Chairman Hall stated that without objection he would ask Mr. Cosgrove to prepare the amendatory language.

Chairman Hall then stated that of real concern to him is the definition of homicide as the new code has done away with second degree homicide. Discussion followed. Time wise the committee was then done for the day, though nothing actually resolved by action on this issue.

Meeting adjourned at 10:35 a.m.

JCH:pb


JOHN C. HALL, CHAIRMAN

March 5, 1973

JUDICIARY COMMITTEE

The forty fifth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Monday, March 5, 1973 at 9:00 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representatives Baucus and Lucas, absent, excused.

SENATE BILL 109 Mr. Terry Cosgrove was present at the request of the committee and provided prepared form for amendments acted upon in meeting of Thursday, March 1, 1973. Chairman Hall stated that before getting to details he feels the committee should figure out how it is going to proceed on this bill, whether crime by crime or section by section. Discussion ensued and the general feeling was that the committee would proceed section by section. Chairman Hall stated that the committee would take sections one at a time with no more than ten minutes per section except where have major section and he would then allow thirty minutes per section. If there is a serious problem with a section he will change this time allowance.

Representative Towe moved to adopt an amendment changing the age from sixteen to eighteen on page 27, line 4 as requested by Senator Gene Turnage. Representative Marbut seconded. Motion carried unanimously.

Representative Greely moved to amend on page 10, lines 3 and 4, page 12, lines 22 and 23 and on page 14, lines 6 and 7 by deleting section 94-2-101, subsection (15), (31) and (37) in their entirety and to renumber subsections accordingly and also change sequential sections on page 22, lines 15 through 17. Motion carried with Representatives Greely, Bell, McKittrick, Roberts and Hall voting yes. Representatives Marbut, Baeth and Brown voted no. Representatives Yardley, Towe and Warfield abstained.

Representative Hall moved to amend without objection on page 22, line 17 by deleting "942-2-101" and inserting in lieu thereof the material "94-2-101".

Chairman Hall also moved to amend without objection on page 22, line 19 after the words "if the" by deleting the word "statue" and inserting in lieu thereof the word "statute".

Time ran out for the committee and the meeting left off on discussion concerning the defendant still having the burden of proof and Chairman Hall asked the committee to think about it for now.

The meeting adjourned at 10:32 a.m.

JCH:pb


JOHN C. HALL, CHAIRMAN

Proposed amendment to Senate Bill 109, The Proposed Criminal Code.

In section 1 of the bill on page 40 in the Aggravated Assault section, 94-5-202, that section will be amended by changing the period on line 22 after the word "weapon" to a semicolon and adding the word "or" and then adding a new subsection which will be number subsection (d) which would read as follows:

(d) Inflict bodily injury to a peace officer.

The entire section would then read as follows:

94-5-202. Aggravated Assault.

(1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

(a) serious bodily injury to another; or

(b) bodily injury to another with a weapon; or

(c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) inflict bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

The underline portion is the proposed change.

March 6, 1973

JUDICIARY COMMITTEE

The forty sixth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Monday, March 5, 1973 at 9:00 a.m. Representative Dan V. Yardley, Vice-Chairman, presided. All members were present except Representatives Hall, Lucas, McKittrick and Warfield, absent excused and Representative Brown, absent. Mr. Terry Cosgrove and Mr. Larry Ellison were also present.

SENATE BILL 109 Mr. Terry Cosgrove pointed out there was still one other amendment to be made in definitional section which was proposed by the commission on page 18, section 2, line 15 after the words "by another person" by inserting the new material "for purpose of arousing or gratifying the sexual desire of either party". Representative Greely seconded. Motion carried to adopt amendment.

Chairman Yardley, without objection, moved to amend on page 18, line 11 after the word "vulva" by inserting the punctuation mark "," to correct clerical error. No objection. Motion carried.

Representative Greely moved to adopt the two pages of amendments as written and provided by Mr. Terry Cosgrove which were proposed and carried by committee in meeting of March 5, 1973. (see exhibit attached). Representative Marbut made a substitute motion to adopt all amendments except the one on page 2 concerning "intoxicating substances". Representative Marbut's motion carried unanimously.

Representative Marbut moved to amend by deleting references to the death penalty. Representative Towe seconded. Much discussion ensued. Representative Greely stated he opposed this amendment. Representative Yardley stated he voted against the death penalty and is opposed to it but will not vote for the amendment. Roll call vote was taken and the motion to delete the death penalty failed with Representatives Baucus, Marbut and Towe voting yes and Representatives Hall, Brown, Lucas, McKittrick and Warfield absent.

Representative Roberts moved to amend on page 39, line 4, subsection (1) (e) by deleting it in its entirety. Motion carried unanimously.

Representative Roberts moved to amend on page 39, subsection (2) (a) (b) and (c), lines 6 through 13 in their entirety. Motion failed with Representatives Bell and Roberts voting yes.

Representative Greely moved to amend on page 38, subsection (c), line 25 and carried over to page 39, line 1, by deleting this subsection in its entirety. Representative Towe seconded. Motion carried with Representatives Bell and Baeth voting no.

Representative Greely moved to amend on page 38, line 19 (amendment proposed by Judge Castles in his letter, see exhibit) after the word "court" by deleting the word "may" and inserting in lieu thereof the word "shall". Discussion followed. Motion carried with Representatives Towe, Baucus, Hall and Marbut voting no.

Chairman Yardley moved without objection to amend on page 39, line 3 after the word and punctuation "duty;" by deleting the word "or". No objection. Motion carried.

Representative Towe moved to amend on page 39, subsection (d), lines 2 and 3 by deleting subsection (d) in its entirety. Motion failed with Representatives Towe, Bell and Marbut voting yes.

Representative Bell proposed that the whole committee consider the question of the death penalty as so many members are absent today. Stated the death penalty also involved on page 158.

Representative Bell moved to amend on page 43, subsection (1), line 20 after the word "court" by deleting the word "may" and inserting in lieu thereof the word "shall". Discussion followed. No action taken on proposed amendment.

Representative Hall questioned why change the death penalty to make it mandatory and then change it to be unmandatory. Proposed an amendment and requested Mr. Cosgrove and Mr. Ellison to draft two alternative proposals to Chairman Hall's proposed amendment.

Time ran out and the meeting adjourned at 10:35 a.m.

DVY:pb


DAN V. YARDLEY, VICE-CHAIRMAN

State of Montana
Supreme Court

HELENA
March 1, 1973

Hon. John Hall
Chairman House Judiciary Committee
43rd Legislative Assembly
Capitol Bldg.
Helena, Montana

Dear Representative Hall:

This letter is intended to inform you and your committee of the amendments proposed by the Criminal Law Commission to the Proposed Criminal Code, Senate Bill 109. The Commission has proposed these amendments in a somewhat piecemeal fashion, and some of the proposed amendments have been withdrawn. To clarify any confusion this might have caused, the Commission now proposes the following amendments:

1. Abortion: "In section 29 of the bill, page 148 the renumbering section, that section will be amended by deleting all of line 16 and line 17 through the number 94-5-612."

"Section 32 of the bill will be amended by adding to the bill on line 5 page 159 after the number 94-306, the following: 94-401 through 94-402."

Note: This proposed change will take the present abortion statute, 94-401, 94-402, from the transfer section and place that statute in the repealing section.

2. Responsibility. 94-2-109: This is in section 1 of the bill on page 27, the section will be amended on line 6, by substituting the word "eighteenth" for the word "sixteenth". The section would then read:

"No person is capable of committing any offense unless he had attained his sixteenth birthday at the time the act in question was committed. Any person who has not yet attained his eighteenth birthday shall be subject to the law as provided in Title 10, Chapter 6, R.C.M. 1947."

Note: This amendment would change the age in the Responsibility section from 16 years old to 18 years old.

③ Sexual Intercourse. 94-2-101(56): In Section 1 of the bill, page 18, line 15 after the word "person" insert the following language:

"for the purpose of arousing or gratifying the sexual desire of either party."

The final sentence of the bill will read as written

in the bill.

Note: This amendment will be added to the definition of sexual intercourse.

4. In section 1 of the bill, on page 38, the section 94-5-105, Sentence of Death for Deliberate Homicide, on line 19 after the word "court", change the present word "may" to "shall". Line 19 would then read as follows:

"deliberate homicide, the court shall impose the sentence of".

In section 1 of the bill, on page 43, section 94-5-304, Sentence of Death For Aggravated Kidnapping, on line 20 after the word "court", change the present word "may" to "shall", line 20 would then read:

"A Court shall impose the sentence of death".

In section 30 of the bill on page 158, the section 95-2206.1, Sentence to Death, on line 2 after the word "court", change the present word "may" to "shall". Line 2 would then read:

"death or imprisonment, the court shall sentence the offender".

Note:

These 3 amendments change the capital punishment sections of the proposed code, by substituting the word "shall" for the word "may" which is presently used.

- worked out*
5. In section 31, 95-2206.4, When no Felony Penalty is Specified, on page 158, an amendment will be added to that section on page 159, line 1: the number five (5) which appears after the word exceed, will be changed to ten (10).

Note: This amendment is intended to keep the sentencing scheme in order by changing the five year sentence in this section to ten years.

These then are the only amendments proposed by the Criminal Law Commission to the Proposed Criminal Code. If you would have any questions of these amendments or want any further clarification, I would be happy to answer them.

Sincerely,

Wesley Castles
Wesley Castles

WC:jw

cc: Senators Turnage

AMENDMENTS TO SENATE BILL 109 PROPOSED CRIMINAL CODE

Worked out
In section 1 of the bill, 94-2-101 (15) Felony, on page 10 of the bill, will be changed to read as follows:

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one year.

Worked out
In section 1 of the bill, 94-2-101 (37) Offense, on page 14, will be changed to read as follows:

(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

Worked out
In section 1 of the bill, 94-2-101 (31) "Misdemeanor", on page 12 of the bill; will be amended to read as follows:

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

Worked out
In section 1 of the bill 94-1-105 Classification Of Offenses, on page 4 of the bill, that section will be amended by deleting sections (1), (2) and (3) from the bill and changing sections (4) and (5) to sections (1) and (2) respectively.

worked out

In section 1 of the bill, 94-2-101 (25) Intoxicating Substance, on page 11 of the bill will be amended to read as follows:

(25) "Intoxicating substance" means any substance having an hallucinagenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one-half of one per centum or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum of alcohol by volume.

(The underlined portion is the proposed change)

worked out

In section 1 of the bill, 94-2-101 (47), Possession, on page 16 of the bill, that section will be amended as follows:

“(47) Possession is the knowing control of any thing for a sufficient time to be able to terminate control.

March 7, 1973

JUDICIARY COMMITTEE

The forty seventh meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Wednesday, March 7, 1973 at 9:00 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representative McKittrick, absent, excused, for the first fifteen minutes of meeting.

Chairman Hall opened the meeting stating that hearing on House Bill 495 would be held on Thursday, March 8th and hearing on Senate Bill 376 was scheduled for Friday March 9th. The committee has the criminal code before them on this day and left off yesterday considering the death penalty provision. As the Chair understands, the committee had amended section to make the death penalty mandatory, had moved to amend a couple subsections and then committee felt motion should have been reconsidered when more committee members could be present. Representative Marbut, having made the motion yesterday, moved to reconsider to delete all references to the death penalty. Chairman Hall stated this motion open up all action taken yesterday. Representatives Yardley and Towe seconded. Motion carried with Representative Lucas voting no. Representative Lucas withdrew his no.

Chairman Hall stated that Senate Bill 109 with regard to the death penalty was not in same state as when came in from the senate. Professor Elison provided committee members with three alternatives for amendatory language regarding the death penalty provision as committee moved to amend in previous meeting. Representative Marbut requested that committee in considering alternatives look into "mental condition" provision and stated that if we can provide for mental condition why can't we refer to physical condition. Concept of diminished responsibility mentally as well as total irresponsibility. Much discussion among committee members regarding imposing the death penalty. Representatives Brown and Towe discussed the death penalty for prisoners only. Representative Roberts stated he supports Representative Marbut's opinion to delete the death penalty but politicals enter in and if send bill to floor without the death penalty they will surely put it in on the floor.

Representative Marbut moved that Senate Bill 109 be amended by deleting all reference to the death penalty. Motion failed with Representatives Baucus, Greely, Marbut and Towe voting yes.

Representative Towe moved to accept alternative #I with the deleting of subsection (b) and (c). He stated this leaves the death penalty that Representative Brown referred to. The Chair stated that it would divide the question. Motion to delete subsection (b) from alternative #I failed with Representatives Baucus, Brown, Greely, Marbut and Towe voting yes. Motion to delete subsection (c) in alternative #I failed with Representatives Yardley, Baucus, Brown, Greely, Marbut and Towe voting yes.

Professor Elison explained that alternatives #I and III are identical in substance, the language is the only difference. Alternative II is the broadest kind of discretion in trying a case, broadest scope for not invoking death penalty.

Representative Baucus moved committee adopt alternative II. Representative Greely seconded. Representative Lucas questioned whether alternative could be redrafted to put mitigating circumstances in separately. Motion to accept alternative #II carried with Representatives Baeth, Bell, Brown, Greely, Lucas and Warfield voting no.

Representative Lucas moved to place back into death penalty code the proposed provision of code, subsection (e). Representative Bell seconded. Motion failed with Representatives Yardley, Bell, Lucas, McKittrick and Warfield voting yes.

Chairman Hall stated he felt the committee would want to adopt alternative II in section 94-5-304 pertaining to the death penalty in kidnapping since committee adopted alternative II in section 94-5-105. Representative Greely made substitute motion to delete the death penalty in aggravated kidnapping section. Motion failed with Representatives Baucus, Greely, Marbut, Roberts and Towe voting aye. With no objection alternative II for kidnapping will be treated the same as alternative II for the death penalty. No objection.

Chairman Hall thanked the committee for delaying action on the definition and amendatory language on "intoxicating substances" until he could be present. Committee will take this up now. Representative Greely moved to accept amendment on intoxicating substances under 94-2-100(25) as proposed and requested by Judge Castles in letter dated March 1, 1973. Motion to accept amendment carried unanimously.

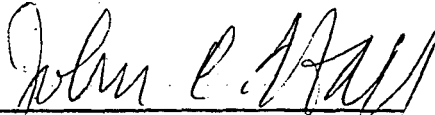
Representative Greely moved to adopt amendment #5 proposed by Judge Castles in his letter of March 1, 1973 on felony penalty. Motion carried unanimously.

Chairman Hall stated he was opposed to placing upon the defendant the burden of proof, it is unfair and makes instructing the jury wild and almost impossible. All of the affirmative defense has the burden of proof. This is on page 23, subsection (6) of SB 109. Representative Towe moved that every place it requires "affirmative defense" including page 23, lines 23 to 25 the term "preponderance of evidence from defense" be deleted and suitable language be used. Representative Brown seconded. Representative Greely made a substitute motion to give the problem to Mr. Cosgrove and Professor Elison to work out on use of "preponderance of evidence, to draft amendatory language. Representative Lucas seconded. Motion to amend preponderance of evidence carried with Representatives Bell, Greely, Lucas, Marbut,

Page 3
(3/7/73 minutes)

Roberts and Warfield voting no. Professor Elison will prepare amendments. Representative Greely withdrew his substitute motion.

Time ran out and the committee adjourned at 10:35 a.m.


JOHN C. HALL, CHAIRMAN

JCH:pb

Amendments to Senate Bill 109

worked out

1. In section 1 of the bill, 94-2-103, on page 23 of the bill, amend the section by deleting all of words after the word "defense" on line 24 and all of words on line 25. The subsection would then read:

"(6) Any defense based upon this section is an affirmative defense."

.....

worked out

2. In section 1 of the bill, 94-2-112, on page ²⁹~~28~~ of the bill, subsection (2) will be amended by deleting the following language, found on line 5 "by a preponderance of the evidence," from the section.

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.....

worked out

3. In section 1 of the bill, 94-5-506, on page 47, subsection (1) will be amended by deleting the following from line 22 "by a preponderance of the evidence," from the bill.

SENATE BILL 109 Chairman Hall opened discussion of this bill by listing requests of committee members on sections they wished to work on. The list was as follows:

- Representative Marbut - death penalty for premeditated murder.
- Representative Baucus - treason issue
- Representative Greely - eliminate "or suffers from serious bodily harm" from alternative II to amend section 94-5-304 on page 43.
- Representative Towe - 94-8-110, obscenity, page 105 in green book.
- Representative Roberts- death penalty to do with life imprisonment instead and to specify "life imprisonment".
- Representative Greely - Mr. Johnston's amendment on trespassing.
- Representative Baucus - acts between consenting adults.
- Representative Hall - habitual offenders.
 - Judge Castles' proposed amendment on abortion.

Chairman Hall then stated the committee had left off with amendment dealing with "preponderance of evidence" in previous meeting and Mr. Cosgrove presented a copy of his proposed amendatory language. Representative Greely moved to accept amendments as proposed on "preponderance of evidence". Representative Bell stated he was reluctant to take this rule out and what kind of rule will we have then. This, he feels, is step to make it more difficult to prove a case and who is guilty. The Chair ruled that this issue had been passed on already. The motion to accept proposed amendatory language on "preponderance of evidence" carried with Representatives Baeth, Bell and Roberts voting no, Representatives Lucas and McKittrick excused, and the remainder voting aye.

Representative Bell moved to amend on page 39, section 94-5-101 by adding subsection (d) the deliberate homicide was committed by ambush or after lying in wait. Representative Roberts opposed. The motion failed with Representatives Bell and Hall voting yes.

Representative Roberts moved to limit imposition of death penalty for deliberate murder for prisoner killing while in prison and already on life sentence. Representative Greely seconded. Following discussions during which it was stated this was covered on page 37, lines 21 through 24 on term sentencing Representative Roberts withdrew his motion.

Chairman Hall stated the next matter to consider was the section on treason, 94-7-501 on page 93. Representative Marbut moved to delete the entire section on treason and upon asking, found the commission included section on treason because of outside pressure. Representative Baucus seconded. Representative Bell stated this section doesn't do anything and for that reason doesn't hurt anything. Motion carried with Representative Bell voting no.

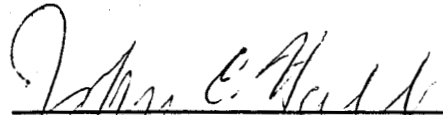
Representative Greely moved to amend the proposed alternative II for amendatory language on section 94-5-304, page 43, section 1 which was voted for acceptance in meeting of March 7, 1973 after the words "is dead" by deleting the material "or suffers from serious bodily harm". Representative Towe seconded. Motion carried with Representatives Baeth and Hall voting no.

Chairman Hall stated that obscenity, section 94-8-110 on page 104 in the bill would be considered next. Representative Towe moved to substitute the language of the first commission report in the yellow book. Representative Greely seconded. Motion carried with Representative Bell voting no and Representative Hall abstaining.

Representative Marbut moved that the question of final deposition of bill be postponed until Friday, March 9, 1973. Representative Greely moved substitute motion that those who can meet and work on amendments and try to dispose of matters on adjournment of the House today and then final vote on bill on Friday. Chairman Hall stated he would call a meeting this evening upon adjournment of the House for all who can come it if isn't too late when house adjourns, will act upon these separate sections and also called meeting for 8:00 a.m. on March 9, 1973.

All business being concluded, the meeting adjourned at 10:30 a.m.

JCH:pb


JOHN C. HALL, CHAIRMAN

March 9, 1973

JUDICIARY COMMITTEE

The forty ninth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Friday, March 9, 1973 at 8:10 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representative Lucas, absent, excused.

SENATE BILL 109 Chairman Hall stated the committee would work again on this bill until 9:00 a.m. at which time hearing would be conducted on Senate Bill 376 scheduled for this morning.

Representative Towe moved to delete the section concerning desecration of the flag, 94-7-502 on pages 93 and 94. Representative Baucus seconded. Discussion followed with Representative Towe stating he did much research into cases involving desecration of the flag. Motion to amend carried with Representatives Yardley, Hall and Bell voting no. Chairman Hall stated he wished to go on record that he had never seen so much fussing about nothing.

Chairman Hall stated the committee would then take for consideration Mr. Johnson's amendment as proposed during testimony from witnesses regarding "Enter or Remain Unlawfully" under definitions; also two new sections he proposed (see exhibit). Chairman Hall feels after checking the title of this bill there would not be any problem inserting two new sections and ruled that unless there was objection from the body will include two new sections saying section 26-110.0 is amended to read as follows and section 26-110.2 is amended to read as follows. Also key numbers would have to be amended in line 4 by inserting after "25-229" the new figures "26-110.1 and 26-110.2". There were no objections from committee so two new sections, sections 35 and 36, will be added. Representative Greely moved the adoption of amendment on "Enter or Remain Unlawfully". Representative McKittrick seconded. Much discussion ensued regarding just what this bill applied to and how it affects existing codes. Substitute motion made to pass this section at this time on "Enter or Remain Unlawfully" carried with Mr. Cosgrove and Professor Elison to prepare language in conformity with Representative Hall's suggestion. Motion carried.

Representative Towe moved to amend on page 10, section 94-2-101, line 2 after the word "sex" by deleting the material "or any form of sexual intercourse with an animal" and inserting in lieu thereof the material "without consent".

Representative Greely brought up the question of consenting adults. Chairman Hall ruled that since last vote was a negative vote do not need a motion to reconsider. Representative Greely moved to delete homosexuality between two consenting adults and bestiality between man and sheep. With twelve committee members present the motion tied and the Chair ruled it was therefore defeated.

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February 24, 1973

Judiciary Committee,
House of Representatives
Attention Hon. John C. Hall, Chairman
Helena, Montana 59601

Gentlemen:

At the committee hearing on January 29, I suggested that Section 94-6-201 of the proposed Montana Criminal Code (at page 58 of SB 109) be amended to make a distinction between a person who enters upon land of another by walking and one who enters in a vehicle. Perhaps it can be assumed that landowners are willing to permit persons upon the land if they walk, but, as I indicated at the hearing, I do not believe that it can be assumed that landowners wish persons to enter in snowmobiles, trailcycles, 4-wheel drive vehicles or ATV's. I also believe that the section should be amended to make it clear that a peace officer has authority to request a person to leave land.

The section, with the suggested amendments, would read as follows:

94-6-201. Definitions.

"Enter Or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who on foot enters or remains upon land does so with privilege unless notice to leave or to keep out is personally communicated to him by an a peace officer or other authorized person, or unless such notice is given by posting in a conspicuous manner.

At the hearing Senator Turnage suggested an amendment to Section 94-6-201, a copy of which is attached. I do not believe that these provisions are necessary for the following

reasons:

(a) If a person hunts on the land of another, he violates Section 26-303.3 of the Fish and Game laws.

(b) If he injures, damages, or destroys property, he will violate Section 94-6-102 (dealing with criminal mischief) of the proposed code.

Sections 26-110.1 and 26-110.2 refer to Sections 94-3308 and 94-3309, which will be repealed by Senate Bill 109 and replaced by Sections 94-6-102 and 94-6-203. Accordingly, I recommend that the following Sections be added to SB 109:

Sec. 35. Section 26-110.1, R.C.M. 1947, is amended to read as follows:

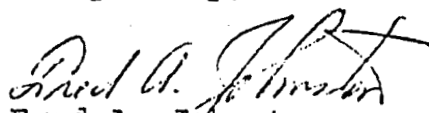
"26-110.1. Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

Sec. 36. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947."

If the members of the committee would like any additional information, I would be glad to provide them with it.

Yours very truly,


Fred A. Johnston

94-6-201 DEFINITIONS

"ENTER OR REMAIN UNLAWFULLY." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

The following section is found in section 1 of the bill on page 58, and the section will be amended by adding the following underlined words on line 24 after the word unless, to read:

"ENTER OR REMAIN UNLAWFULLY A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless he is hunting upon enclosed premises; or, he is injuring, damaging, or destroying property; and notice to keep out, do not hunt, or to leave is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner."

(The underlined material is the proposed change).

March 10, 1973

JUDICIARY COMMITTEE

The fiftieth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Saturday, March 10, 1973 at 8:30 a.m. Representative John C. Hall, Chairman, presided. All members were present.

SENATE BILL 109 Chairman Hall stated the committee had three matters left on the criminal codes. Representative Greely moved the adoption of amendment on abortion as presented by Judge Castles in his letter of March 1, 1973 which amends on page 148, section 29, by deleting all of line 16 and line 17 through the number 94-5-612 and amend section 32 on page 159, line 5 after the number 94-306 by adding the following: "94-401 through 94-402". Representative Towe seconded. Motion carried unanimously.

Chairman Hall suggested committee take up habitual offenders section in code which is 95-1507 and he would like to take up in this connection House Bill 38 by Representative Brand without objection. Representative Greely moved to keep sections of code in because there is some flexibility as written now. Urged committee to pass code as it is. Representative Warfield seconded. Discussion followed including comment by Representative Towe that pardon is rarely used and would be a special case when person files for appeal on grounds of new evidence. He also questioned what if decision reversed as government does have the right of appeal under Habeas Corpus. Chairman Hall stated that without objection he would treat as a clerical addition on page 117, line 1 after the words "post conviction hearing" by adding the new material "and has not been reversed on appeal". Hearing no objection the new material will be inserted. Motion to amend carried with Representatives Towe and McKittrick voting no.

HOUSE BILL 38 This bill was then taken for consideration in conjunction with the criminal codes in section on habitual offenders. Comparison was made by committee. Representative Greely moved House Bill 38 DO NOT PASS. Representative Bell seconded. Motion carried unanimously.

SENATE BILL 109 Representative Towe moved to delete on page 116, lines 8 and 9 the words "less than five (5) years nor". Representative McKittrick seconded. Motion failed with Representatives Marbut, McKittrick, Roberts, Baucus, Brown and Towe voting yes.

Professor Elison then provided committee with proposed alternatives for language regarding "Entering and Remaining Unlawfully", (see exhibit), an amendment moved and carried in meeting of March 9, 1973. Professor Elison explained his three proposed alternatives. Representative Marbut moved the adoption of

alternative #1 which is pro rancher or land owner, relates only to pedestrian and reads as follows: "Enter or Remain Unlawfully. A person enters or remains unlawfully in or upon any vehicle, or occupied structure of premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section."

Representative Towe made a substitute motion to adopt alternative #3 stating that with alternative #1 could have problems with people who might be up in the air over this. Considerable discussion followed. Motion failed with Representative Towe voting aye. Committee reverted to original motion to adopt alternative #1 on page 58, 94-6-201, as replacement for present section 94-6-201. Motion carried with Representatives McKittrick, Roberts and Towe voting no.

Representative Marbut raised question of looking on page 113, subsection (d), lines 11, 12 and 13 and moved to amend by deleting the words "or from a relative". Representative Towe seconded. Discussion followed and Representative Marbut revised his motion to amend on page 113, subsection (d), line 11 by deleting the word "relative". Motion carried unanimously.

Committee reverted to habitual offenders section. Representative Roberts moved to amend on page 116, section 2, subsection (a) dealing with classification of offenses in code on felony and stated he feels it is inconsistent with 94-1-105. Representative Baucus seconded. Representative Hall stated he was a little disturbed by Representative Roberts' proposal and pointed out that with a kid under sixteen the judge is lenient on the kid the first offense and then he goes back at it again and just is limited in sentencing him. Motion failed with Representatives Baucus, Towe, Marbut, McKittrick and Roberts voting yes.

Representative Greely moved to amend on page 116, line 14 by changing five (5) years to ten (10) and stated he feels five years is too short a time. Motion failed with Representatives Lucas, Bell, Warfield and Greely voting yes.

Chairman Hall then announced that Senate Bill 109 was before the committee as a whole. Representative Warfield requested a rundown of all the amendments and they were read by Chairman Hall. Representative Marbut moved for committee to reconsider action on homosexuality and bestiality stating the minutes are a matter of public record and may later be used politically. Motion made to reconsider. Representative Greely moved that section on homosexuality and bestiality be eliminated from the codes. Representative Greely requested the roll call vote be taken.

With all members present, Representatives Greely, Roberts and Towe voted yes, the remaining committee members voted no. Motion failed.

Representative Greely moved Senate Bill 109 BE CONCURRED IN AS AMENDED. Representative Roberts seconded. Motion carried unanimously.

HOUSE BILL 594 Representative Roberts, chief sponsor, stated he wished to postpone consideration on this bill which was heard in committee several days prior. He stated he wanted to make amendments. Representative Roberts moved consideration be deferred until next regular session. Representative Baeth seconded. Motion carried.

Chairman Hall stated the Chair will entertain a motion to thank Mr. Terry Cosgrove and Professor Larry Elison for their help during the past week. Motion seconded by many and carried unanimously. Representative Greely moved the committee send a letter of commendation to Judge Wesley W. Castles of the Criminal Code Commission with a copy to Professor Elison and Mr. Cosgrove. Motion carried unanimously.

SENATE BILL 376 Chairman Hall stated that without objection he would take this bill sponsored by Senator P. J. Gilfeather up in two sections and treat amendment dealing with WICHE program and the two amendments dealing with scholastic aspects. No objection. Representative Warfield moved to amend on page 2, lines 1, 2 and 3 in the Senate Third Reading Bill after the word "year" by deleting the inserted underlined material "only when such waiver does not result in the exclusion of a resident student in favor of a nonresident;", and also amend on page 2, line 7 after the word "sponsored" by deleting the material "eight (8)". Motion carried unanimously to amend. The Chair then ruled that on page 2, subsection (2), lines 11 and 12 are deleted as they are in the Senate Third Reading Bill. Chairman Hall stated the committee then had before it subsection (C). Representative Greely moved to bring out Senate Bill 376 without subsection (C), and if committee agrees will consider as committee bill a bill dealing with substance of Senate Bill 346 to be brought out on second reading and Senate Bill 376 with title be amended by deleting its underlined portions as in the Third Reading Senate Bill. Motion carried unanimously.

JCH:pb


JOHN C. HALL, CHAIRMAN

3/10/73

ALTERNATE NO. I

ENTER OR REMAIN UNLAWFULLY. A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

ALTERNATE NO. II

ENTER OR REMAIN UNLAWFULLY. A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon land is privileged to do so unless he is hunting upon inclosed premises or is injuring, damaging or destroying property.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

ALTERNATE NO. III

ENTER OR REMAIN UNLAWFULLY. A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person on foot who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

HOUSE OF REPRESENTATIVES

March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109.

be amended on page 1, key line 4 of the Senate Third Reading bill after the figures "25-229," by inserting the new material "26-110.1, 26-110.2,", and

be further amended on page 4, section 1, 94-1-104, subsection (1), (2) and (3), lines 11 through 24 of the Senate Third Reading Bill by deleting lines 11 through 24 in their entirety and renumbering the subsequent subsections, and

be further amended on page 10, section 1, 94-2-101, subsection (15), lines 3 and 4 of the Senate Third Reading Bill after the word "Felony" by deleting the material "has-the-meaning-specified-in-section-94-1-105" and inserting in lieu thereof the new material "means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.", and

Be further amended on page 11, section 1, 94-2-101, subsection (25), lines 9 through 16 of the Senate Third Reading Bill after the punctuation and figures "(25)" by deleting all of the material in lines 9 through 16 and inserting in lieu thereof the new material: "Intoxicating substance" means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one half of one per centum (1/2 of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (1/2 of 1%) of alcohol by volume.", and

be further amended on page 12, section 1, 94-2-101, subsection (31), lines 22 and 23 of the Senate Third Reading Bill after the word "Misdemeanor" by deleting the material "has-the-meaning-as-specified-in-section-94-1-105" and inserting in lieu thereof the new material "means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less", and

be further amended on page 14, section 1, 94-2-101, subsection (37), lines 6 and 7 of the Senate Third Reading Bill after the word "Offense" by deleting the material "has the meaning specified in section 94-1-105" and inserting in lieu thereof the new material "means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors", and

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

be further amended on page 16, section 1, 94-2-101, subsection (47), lines 3 through 6 of the Senate Third Reading Bill after the word "Possession" by deleting the material ~~"is-a-voluntary-act-if-the-offender-knowingly-secured-or-received-the-thing-possessioned, or-was-aware-of-his-control-thereof-for-a-sufficient-time-to-have-been-able-to-terminate-his-control"~~ and inserting in lieu thereof the new material "is the knowing control of anything for a sufficient time to be able to terminate control", and

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "vulva" by inserting the punctuation mark ".", and

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "person" by inserting the new material "for the purpose of arousing or gratifying the sexual desire of either party", and

be further amended on page 22, section 1, 94-2-103, subsection (2), line 19, after the words "If the" by deleting the word "statue" and inserting in lieu thereof the word "statute", and

be further amended on page 23, section 1, 94-2-103, lines 24 and 25 of the Third Reading Senate Bill after the word "defense" by deleting the material ~~"which-the-defendant-must-prove-by-a-preponderance-of-evidence"~~, and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 4 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 16 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 29, section 1, 94-2-112, subsection (2), lines 5 and 6 of the Third Reading Senate Bill after the word "proof" by deleting the material ~~"7-by-a-preponderance-of-the-evidence"~~, and

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

be further amended on pages 38 and 39, section 1, 94-5-105, subsections (1), (a), (b), (c), (d), (e), (2), (a), (b) and (c) in the Senate Third Reading Bill in lines 18 through 25 on page 38 and lines 1 through 13 on page 39 by deleting these lines in their entirety and inserting in lieu thereof the new material:

"(1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison, or

(b) The defendant was previously convicted of another deliberate homicide; or

(c) The victim of the deliberate homicide was a peace officer killed while performing his duty.", and

be further amended on page 40, section 1, 94-5-202, subsection (c), line 21 of the Senate Third Reading Bill after the word "weapon" by deleting the punctuation mark "—" and inserting in lieu thereof the new material " ; or (d) Bodily injury to a peace officer.", and

be further amended on page 43, section 1, 94-5-304, subsections (1) and (2), lines 20 through 25 and continued over to page 44, lines 1 through 4 of the Senate Third Reading Bill by deleting all of the material in lines 20 through 25 and lines 1 through 4 and inserting in lieu thereof the new material: "A court shall impose the sentence of death following conviction of aggravated kidnapping if it finds that the victim is dead as the result of the criminal conduct unless there are mitigating circumstances.", and

be further amended on page 47, section 1, 94-5-506, subsection (1), line 22 in the Senate Third Reading Bill after the word "prove" by deleting the material "by a preponderance of the evidence", and

be further amended on page 58, section 1, 94-6-201, lines 20 through 25 and continued over to lines 1 and 2 on page 59 of the Senate Third Reading Bill by deleting all the material on lines 20 through 25 on page 58 and lines 1 and 2 on page 59 in their entirety and inserting in lieu thereof the new material "Enter or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure of premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this action.", and

be further amended on page 93, section 1, 94-7-501, lines 9 through 22 of the Senate Third Reading Bill by deleting this section on Treason in its entirety, and

be further amended on page 93, section 1, 94-7-502, lines 23, 24 and 25 and continued to page 94, lines 1 through 23 of the Senate Third Reading Bill, by deleting this section on Desecration of Flags in its entirety, and

be further amended on page 104, section 1, 94-8-110, lines 8 through 25, page 105, lines 1 through 25, page 106, lines 1 and 2 of the Senate Third Reading Bill by deleting all of the section on "Obscenity" and inserting in lieu thereof the new material:

94-8-110. Obscenity

(1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene anyone under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if: (a) the dominant theme of the material taken as a whole appeals to a prurient interest, that is, a shameful or morbid interest in violence, nudity, sex or excretion; and (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

be further amended on page 16, section 1, 94-2-101, subsection (47), lines 3 through 6 of the Senate Third Reading Bill after the word "Possession" by deleting the material ~~"is-a-voluntary-act if-the-offender-knowingly-secured-or-received-the-thing-possessed, or-was-aware-of-his-control-thereof-for-a-sufficient-time-to-have been-able-to-terminate-his-control"~~ and inserting in lieu thereof the new material "is the knowing control of anything for a sufficient time to be able to terminate control", and

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "vulva" by inserting the punctuation mark "_", and

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "person" by inserting the new material "for the purpose of arousing or gratifying the sexual desire of either party", and

be further amended on page 22, section 1, 94-2-103, subsection (2), line 19, after the words "If the" by deleting the word "statue" and inserting in lieu thereof the word "statute", and

be further amended on page 23, section 1, 94-2-103, lines 24 and 25 of the Third Reading Senate Bill after the word "defense" by deleting the material ~~"which-the-defendant-must-prove-by a-preponderance-of-evidence"~~, and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 4 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 16 of the Senate Third Reading Bill after the words "attained his" by deleting the word "sixteenth" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 29, section 1, 94-2-112, subsection (2), lines 5 and 6 of the Third Reading Senate Bill after the word "proof" by deleting the material ~~"7-by-a-preponderance-of the-evidence"~~, and

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

be further amended on pages 38 and 39, section 1, 94-5-105, subsections (1), (a), (b), (c), (d), (e), (2), (a), (b) and (c) in the Senate Third Reading Bill in lines 18 through 25 on page 38 and lines 1 through 13 on page 39 by deleting these lines in their entirety and inserting in lieu thereof the new material: "(1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison, or

(b) The defendant was previously convicted of another deliberate homicide; or

(c) The victim of the deliberate homicide was a peace officer killed while performing his duty.", and

be further amended on page 40, section 1, 94-5-202, subsection (c), line 21 of the Senate Third Reading Bill after the word "weapon" by deleting the punctuation mark "-" and inserting in lieu thereof the new material " ; or (d) Bodily injury to a peace officer.", and

be further amended on page 43, section 1, 94-5-304, subsections (1) and (2), lines 20 through 25 and continued over to page 44, lines 1 through 4 of the Senate Third Reading Bill by deleting all of the material in lines 20 through 25 and lines 1 through 4 and inserting in lieu thereof the new material: "A court shall impose the sentence of death following conviction of aggravated kidnapping if it finds that the victim is dead as the result of the criminal conduct unless there are mitigating circumstances.", and

be further amended on page 47, section 1, 94-5-506, subsection (1), line 22 in the Senate Third Reading Bill after the word "prove" by deleting the material "by a preponderance of the evidence", and

be further amended on page 58, section 1, 94-6-201, lines 20 through 25 and continued over to lines 1 and 2 on page 59 of the Senate Third Reading Bill by deleting all the material on lines 20 through 25 on page 58 and lines 1 and 2 on page 59 in their entirety and inserting in lieu thereof the new material "Enter or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure of premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

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HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this action.", and

be further amended on page 93, section 1, 94-7-501, lines 9 through 22 of the Senate Third Reading Bill by deleting this section on Treason in its entirety, and

be further amended on page 93, section 1, 94-7-502, lines 23, 24 and 25 and continued to page 94, lines 1 through 23 of the Senate Third Reading Bill, by deleting this section on Desecration of Flags in its entirety, and

be further amended on page 104, section 1, 94-8-110, lines 8 through 25, page 105, lines 1 through 25, page 106, lines 1 and 2 of the Senate Third Reading Bill by deleting all of the section on "Obscenity" and inserting in lieu thereof the new material:

94-8-110. Obscenity

(1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene anyone under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if: (a) the dominant theme of the material taken as a whole appeals to a prurient interest, that is, a shameful or morbid interest in violence, nudity, sex or excretion; and (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined not to exceed five-hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.", and

be further amended on page 113, section 3, line 11 of the Senate Third Reading bill after the words "or from a" by deleting the material "~~relative,~~", and

be further amended on page 148, section 29, lines 16 and 17 of the Senate Third Reading Bill be deleting the material "~~94-401-is renumbered-94-5-6117-94-402-is-renumbered-94-5-612~~", and

be further amended on page 159, section 31, 95-2206.4, line 1 of the Senate Third Reading Bill after the word "exceed" by deleting the material "~~five-{5}~~" and inserting in lieu thereof the new material "ten (10)", and

be further amended on page 159, section 32, line 5 of the Senate Third Reading Bill after the figures 94-306," by adding the new material "94-401 through 94-402,", and

be further amended on page 161 in the Senate Third Reading Bill by adding the new section 36 to read as follows: "Section 36. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of section 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947.", and

be further amended on page 161 in the Senate Third Reading Bill by adding the new section 35 to read as follows: "Section 35. Section 26-110.1, R.C.M. 1947 is amended to read as follows:

"26-110.1 Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308 94-6-102, 94-3309-94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined not to exceed five-hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.", and

be further amended on page 113, section 3, line 11 of the Senate Third Reading bill after the words "or from a" by deleting the material "relative", and

be further amended on page 148, section 29, lines 16 and 17 of the Senate Third Reading Bill be deleting the material "94-401-is renumbered-94-5-6117-94-402-is-renumbered-94-5-612", and

be further amended on page 159, section 31, 95-2206.4, line 1 of the Senate Third Reading Bill after the word "exceed" by deleting the material "five-{5}" and inserting in lieu thereof the new material "ten (10)", and

be further amended on page 159, section 32, line 5 of the Senate Third Reading Bill after the figures 94-306," by adding the new material "94-401 through 94-402,", and

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"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of section 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947.", and

be further amended on page 161 in the Senate Third Reading Bill by adding the new section 35 to read as follows: "Section 35. Section 26-110.1, R.C.M. 1947 is amended to read as follows:

"26-110.1 Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308 94-6-102, 94-3309-94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

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HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109.

Senate accedes
be amended on page 1, key line 4 of the Senate Third Reading bill after the figures "25-229," by inserting the new material "26-110.1, 26-110.2,", and

Senate accedes
be further amended on page 4, section 1, 94-1-105, subsection (1), (2) and (3), lines 11 through 24 of the Senate Third Reading Bill by deleting lines 11 through 24 in their entirety and renumbering the subsequent subsections, and

Senate accedes
be further amended on page 10, section 1, 94-2-101, subsection (15), lines 3 and 4 of the Senate Third Reading Bill after the word "Felony" by deleting the material "has-the-meaning-specified in-section-94-1-105" and inserting in lieu thereof the new material "means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.", and

Senate accedes
Be further amended on page 11, section 1, 94-2-101, subsection (25), lines 9 through 16 of the Senate Third Reading Bill after the punctuation and figures "(25)" by deleting all of the material in lines 9 through 16 and inserting in lieu thereof the new material: "Intoxicating substance means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one half of one per centum (1/2 of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (1/2 of 1%) of alcohol by volume.", and

Senate accedes
be further amended on page 12, section 1, 94-2-101, subsection (31), lines 22 and 23 of the Senate Third Reading Bill after the word "Misdemeanor" by deleting the material "has-the-meaning as-specified-in-section-94-1-105" and inserting in lieu thereof the new material "means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less", and

Senate accedes
be further amended on page 14, section 1, 94-2-101, subsection (37), lines 6 and 7 of the Senate Third Reading Bill after the word "Offense" by deleting the material "has the meaning specified in section 94-1-105" and inserting in lieu thereof the new material "means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors", and

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

Senate accedes

be further amended on page 16, section 1, 94-2-101, subsection (47), lines 3 through 6 of the Senate Third Reading Bill after the word "Possession" by deleting the material "~~is-a-voluntary-act if-the-offender-knowingly-procured-or-received-the-thing-possessed, or-was-aware-of-his-control-thereof-for-a-sufficient-time-to-have been-able-to-terminate-his-control~~" and inserting in lieu thereof the new material "is the knowing control of anything for a sufficient time to be able to terminate control", and

Senate accedes

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "vulva" by inserting the punctuation mark ",", and

Senate accedes to protect a doctor done by Congress

be further amended on page 18, section 1, 94-2-101, subsection (56), line 15 of the Senate Third Reading Bill after the word "person" by inserting the new material "for the purpose of arousing or gratifying the sexual desire of either party", and

Senate accedes

be further amended on page 22, section 1, 94-2-103, subsection (2), line 19, after the words "If the" by deleting the word "statue" and inserting in lieu thereof the word "statute", and

be further amended on page 23, section 1, 94-2-103, lines 24 and 25 of the Third Reading Senate Bill after the word "defense" by deleting the material "~~which-the-defendant-must-prove-by a-preponderance-of-evidence~~", and

amended on floor - little page here

be further amended on page 27, section 1, 94-2-109, subsection (1), line 4 of the Senate Third Reading Bill after the words "attained his" by deleting the word "~~sixteenth~~" and inserting in lieu thereof the word "eighteenth", and

be further amended on page 27, section 1, 94-2-109, subsection (1), line 16 of the Senate Third Reading Bill after the words "attained his" by deleting the word "~~sixteenth~~" and inserting in lieu thereof the word "eighteenth", and

might want to discuss Senate accedes

be further amended on page 29, section 1, 94-2-112, subsection (2), lines 5 and 6 of the Third Reading Senate Bill after the word "proof" by deleting the material "~~by-a-preponderance-of the-evidence~~", and

March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

P. 38 in SB 109

amend by add sub (d)(e)(f) before language in sub a

be further amended on pages 38 and 39, section 1, 94-5-105, subsections (1), (a), (b), (c), (d), (e), (2), (a), (b) and (c) in the Senate Third Reading Bill in lines 18 through 25 on page 38 and lines 1 through 13 on page 39 by deleting these lines in their entirety and inserting in lieu thereof the new material: "(1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison, or

(b) The defendant was previously convicted of another deliberate homicide; or

(c) The victim of the deliberate homicide was a peace officer killed while performing his duty.", and

be further amended on page 40, section 1, 94-5-202, subsection (c), line 21 of the Senate Third Reading Bill after the word "weapon" by deleting the punctuation mark "-" and inserting in lieu thereof the new material "; or (d) Bodily injury to a peace officer.", and

be further amended on page 43, section 1, 94-5-304, subsections (1) and (2), lines 20 through 25 and continued over to page 44, lines 1 through 4 of the Senate Third Reading Bill by deleting all of the material in lines 20 through 25 and lines 1 through 4 and inserting in lieu thereof the new material: "A court shall impose the sentence of death following conviction of aggravated kidnapping if it finds that the victim is dead as the result of the criminal conduct unless there are mitigating circumstances.", and

be further amended on page 47, section 1, 94-5-506, subsection (1), line 22 in the Senate Third Reading Bill after the word "prove" by deleting the material "by a preponderance of the evidence", and

be further amended on page 58, section 1, 94-6-201, lines 20 through 25 and continued over to lines 1 and 2 on page 59 of the Senate Third Reading Bill by deleting all the material on lines 20 through 25 on page 58 and lines 1 and 2 on page 59 in their entirety and inserting in lieu thereof the new material "Enter or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure of premises when he is not licensed, invited or otherwise privileged to do so. A person on foot who enters or remains upon uninclosed land is privileged to do so unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

*motion voted
on a changes
Terry will
draw amendment*

*Senate
accides 2*

*Senate
accides 3*

*Senate
accides 4*

*House
recodes
5*

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

*Senate
recedes*

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this action." ; and

*Senate
recedes
House
recedes*

be further amended on page 93, section 1, 94-7-501, lines 9 through 22 of the Senate Third Reading Bill by deleting this section on Treason in its entirety, and

be further amended on page 93, section 1, 94-7-502, lines 23, 24 and 25 and continued to page 94, lines 1 through 23 of the Senate Third Reading Bill, by deleting this section on Desecration of Flags in its entirety, and

*Senate
recedes*

be further amended on page 104, section 1, 94-8-110, lines 8 through 25, page 105, lines 1 through 25, page 106, lines 1 and 2 of the Senate Third Reading Bill by deleting all of the section on "Obscenity" and inserting in lieu thereof the new material:

94-8-110. Obscenity

(1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene anyone under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if: (a) the dominant theme of the material taken as a whole appeals to a prurient interest, that is, a shameful or morbid interest in violence, nudity, sex or excretion; and (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

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(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

March 10, 1973

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 109 (Con't.)

(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined not to exceed five-hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.", and

*Senate
amended* 1
be further amended on page 113, section 3, line 11 of the Senate Third Reading bill after the words "or from a" by deleting the material "relative", and

*House
amended* 2
be further amended on page 148, section 29, lines 16 and 17 of the Senate Third Reading Bill be deleting the material "94-401-is renumbered-94-5-611, 94-402-is-renumbered-94-5-612", and

*Senate
amended* 3
be further amended on page 159, section 31, 95-2206.4, line 1 of the Senate Third Reading Bill after the word "exceed" by deleting the material "five-(5)" and inserting in lieu thereof the new material "ten (10)", and

*House
amended* 4
be further amended on page 159, section 32, line 5 of the Senate Third Reading Bill after the figures "94-306," by adding the new material "94-401 through 94-402,", and

*Senate
amended* 5
be further amended on page 161 in the Senate Third Reading Bill by adding the new section 36 to read as follows: "Section 36. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of section 94-3308 94-6-102, 94-3309 94-6-203 and 32-4410, R.C.M. 1947.", and

*Senate
amended* 6
be further amended on page 161 in the Senate Third Reading Bill by adding the new section 35 to read as follows: "Section 35. Section 26-110.1, R.C.M. 1947 is amended to read as follows:

"26-110.1 Protection of private property by fish and game wardens ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308 94-6-102, 94-3309-94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

(f) The deliberate homicide was committed
as a part of a scheme or operation which,
if completed, would ~~presumably~~ result in the death
of more than one person

HOUSE OF REPRESENTATIVES

THIRD READING AMENDMENT TO SENATE BILL 109

March 13, 1973

*Senate
accide*

Amend House Committee on Judiciary Amendments to Senate Bill 109,
dated March 10, by deleting from page 2 of said amendments the
following:

✓

"be further amended on page 27, section 1, 94-2-109, subsection
(1), line 4 of the Senate Third Reading Bill after the words
"attained his" by deleting the word "sixteenth" and inserting
in lieu thereof the word "eighteenth", and

*Senate
accide*

further amend such Judiciary Committee Amendments in line 2,
second paragraph from bottom of page 2, by changing "line 16" to
"line 6".

March 19, 1973

JUDICIARY JOINT CONFERENCE COMMITTEE

SENATE BILL NO. 109

Committee members appointed and present were Senators McKeon, Turnage and Zody and Representatives Hall, Lucas and Baucus. The meeting was called to order in Room 436 of the Capitol Building at 10:40 a.m. on Monday, March 19, 1973. Also present was Mr. Terry Cosgrove from the Criminal Code Commission.

See attached exhibit for amendments which the Senate acceded to and the House receded to. In regard to the amendment on the death penalty there was much discussion among committee members. Representative Lucas moved to delete the portion of amendment on death penalty as pertained to gain and reinsert that portion as pertained to heinous or atrocious crime. The motion failed with Senators McKeon and Zody and Representative Lucas voting aye. Representatives Baucus and Hall voted no and Senator Turnage was absent during this vote.

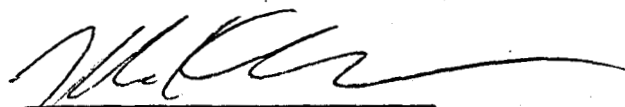
Representative Lucas moved to add deliberate homicide by ambush or lying in wait or death by torture to the death penalty. Senator McKeon seconded. The motion carried with all members voting aye, Senator Turnage absent.

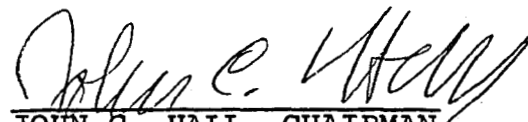
Considerable discussion ensued regarding the amendment deleting the section on treason. Senator McKeon moved to put treason back into the Criminal Codes. Senator Turnage seconded. On a roll call vote the motion failed with Senators McKeon, Zody and Turnage voting aye, Representatives Baucus and Hall voting no, Representative Lucas absent for this vote.

Mr. Terry Cosgrove was directed to write the amendatory language for the additional amendments on the death penalty.

All business being concluded the meeting adjourned at 12:10 p.m.

LMCK:JCH:pb


LUKE MCKEON, CHAIRMAN
SENATE JUDICIARY


JOHN C. HALL, CHAIRMAN
HOUSE JUDICIARY

March 19, 1973

JOINT CONFERENCE COMMITTEE REPORT TO HOUSE JUDICIARY COMMITTEE
AMENDMENTS DATED MARCH 10, 1973 AND HOUSE THIRD READING AMENDMENTS
DATED MARCH 13, 1973 TO SENATE BILL NO. 109.

That the Senate accede to the two house Third Reading Amendments,

And further that the Senate accede to the House Committee on
Judiciary amendments on pages one and two,

And further that the Senate accede to the House Committee on
Judiciary amendments on page three of the amendments, first amend-
ment, and by inserting the following new material at the end of that
amendment;

"(d) the deliberate homicide was committed by means of
torture; or

(e) the deliberate homicide was committed by a person lying
in wait or ambush; or

(f) the deliberate homicide was committed as a part of a
scheme or operation which, if completed, would result in the death
of more than one person.",

And further that the Senate accede to the House Committee on
Judiciary amendments on page three, paragraphs two, three and four,

And further that the House recede to the House Committee on
Judiciary amendments on page three, paragraph five,

And further that the Senate accede to the House Committee
on Judiciary amendments on page 4, paragraph one, an amendment
pertaining to trespassing, section 94-6-201,

And further that the Senate accede to the House Committee
on Judiciary amendments on page four, paragraph two,

And further that the House recede to the House Committee on
Judiciary amendments on page four, paragraph three,

And further that the Senate accede to the House Committee on
Judiciary amendments on page four, paragraph four pertaining to
obscenity which continues over to page five,

And further that the Senate accede to the House Committee on
Judiciary amendments on page five, the first full paragraph,

And further that the House recede to the House Committee on
Judiciary amendments on page five, the second full paragraph,

And further that the Senate accede to the House Committee on
Judiciary amendments on page five, the third full paragraph,

And further that the House recede to the House Committee on
Judiciary amendments on page five, the fourth full paragraph,

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the first full paragraph,

And further that the House recede to the House Committee on Judiciary amendments on page five, the second full paragraph,

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the third full paragraph,

And further that the House recede to the House Committee on Judiciary amendments on page five, the fourth full paragraph,

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the fifth full paragraph,

And further that the Senate accede to the House Committee on Judiciary amendments on page five, the sixth full paragraph,

And that as so amended Senate Bill No. 109 be concurred in.

FOR THE SENATE:

MCKEON

TURNAGE

ZODY

FOR THE HOUSE:

FALL

LUCAS

BAUCUS

facilities, but land under and such additional land as may be actually used in connection with the farm house shall be excluded in determining such total area.

Section 9. Application for valuation, assessment and taxation of land in agricultural use under this act shall be on a form prescribed by the state department of revenue, and provided for the use of the applicants by the county assessor. The form of application shall provide for the reporting of information pertinent to the provisions of this act. A certification by the land owner that the facts set forth in the application are true may be prescribed by the state department of revenue to be in lieu of a sworn statement to that effect. Statements so certified shall be considered as if made under oath and subject to the same penalties as provided by law for perjury.

Section 10. Continuance of valuation, assessment and taxation under this act shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this act and not upon continuance in the same owner of title to the land. Liability to the roll-back tax shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural use, under the conditions prescribed in this act.

Section 11. Separation or split off of a part of the land which is being valued, assessed and taxed under this act, either by conveyance or other actions of the owner of such land, for a use other than agricultural, shall subject the land so separated to liability for the roll-back tax applicable thereto, but shall not impair the right of the remaining land to continuance of valuation, assessment and taxation hereunder, provided it meets the minimum requirements of this act.

Section 12. The taking of land which is being valued, assessed and taxed under this act by right of eminent domain shall not subject the land so taken to the roll-back tax herein imposed.

Section 13. Where contiguous land in agricultural use in one ownership is located in more than one (1) county, compliance with the minimum requirements shall be determined on the basis of the total area and value of farm crops on such land and not the area or value of farm crops on land which is located in the particular county.

Section 14. The factual details to be shown on the assessor's tax list and duplicate with respect to land which is being valued, assessed and taxed under this act shall be the same as those set

forth by the assessor with respect to other taxable property in the county.

Section 15. The state department of revenue is empowered to promulgate such rules and regulations and to prescribe such forms as it shall deem necessary to effectuate the purposes of this act.

Section 16. Any person who violates any provision of this act shall be guilty of a misdemeanor.

Approved: April 4, 1973.

CHAPTER NO. 513

An Act Creating a Montana Criminal Code, to Codify and Generally Revise the Statutes Concerning Criminal Offenses; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. There is hereby created the Montana Criminal Code which is title 94, R.C.M. 1947, and reads as follows:

CHAPTER 1: GENERAL PRELIMINARY PROVISIONS.

94-1-101. **Short Title.** This act shall be known and may be cited as the "Criminal Code of 1973."

94-1-102. **General Purposes And Principles Of Construction.**

(1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;

(b) to safeguard conduct that is without fault from condemnation as criminal;

(c) to give fair warning of the nature of the conduct declared to constitute an offense;

(d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

94-1-103. Application To Offenses Committed Before And After Enactment.

(1) The provisions of this code shall apply to any offense defined in this code and committed after the effective date thereof.

(2) Unless otherwise expressly provided, or unless the context otherwise requires, the provisions of this code shall govern the construction of and punishment for any offense defined outside of this code and committed after the effective date thereof, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before the effective date thereof. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

94-1-104. Other Limitations On Applicability.

(1) This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered and the civil injury is not merged into the offense.

(2) No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment or decree.

94-1-105. Classification Of Offenses.

(1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall be governed by this code.

94-1-106. General Time Limitations.

(1) A prosecution for criminal homicide may be commenced at any time.

(2) Except as otherwise provided in this code, prosecutions

for other offenses are subject to the following periods of limitations:

(a) a prosecution for any felony must be commenced within five (5) years after it is committed;

(b) a prosecution for a misdemeanor must be commenced within one (1) year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) If the aggrieved person is a minor or competent, then during the minority or incompetency or within one (1) year after the termination thereof.

(b) In any other instance, within one (1) year after the discovery of the offense by the aggrieved person, or by a person who has legal capacity to represent an aggrieved person, or has a legal duty to report the offense, and is not himself a party to the offense; or in the absence of such discovery, within one (1) year after the prosecuting officer becomes aware of the offense.

(4) An offense is committed either when every element occurs, or when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

94-1-107. Periods Excluded From Limitation.

The period of limitation does not run:

(1) during any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state; or

(2) during any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(3) during a prosecution pending against the offender for the same conduct, even if the indictment, complaint or information which commences the prosecution is dismissed.

CHAPTER 2: GENERAL PRINCIPALS OF LIABILITY.**94-2-101. General Definitions.**

Unless otherwise specified in the statute all words will be taken in the objective standard rather than in the subjective.

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(6) "Co-habit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true; or

(b) fail to correct a false impression which the offender previously has created or confirmed; or

(c) prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently; or

(b) for such a period as to appropriate a portion of its value; or

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two (2) persons of the same sex, or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.

(16) "A frisk" is a search by an external patting of a person's clothing.

(17) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(18) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any person or entity in whose welfare he is interested.

(20) "He, she, it". The singular term shall include the

plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by statute, rule regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one-half of one per centum ($\frac{1}{2}$ of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum ($\frac{1}{2}$ of 1%) of alcohol by volume.

(26) "An involuntary act" means any act which is:

- (a) a reflex or convulsion; or
- (b) a bodily movement during unconsciousness or sleep, or
- (c) conduct during hypnosis or resulting from hypnotic suggestion; or
- (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"—A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. When knowledge of the existence of a particular

fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(29) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(30) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

(32) "Negligently"—A person act negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists; or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(33) "Obtain" means:

- (a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and
- (b) in relation to labor or services, to secure the performance thereof.

(34) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(35) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate occupied structure.

(36) "Offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

(38) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(42) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

(49) "Property" means anything of value. Property includes, but is not limited to, real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or otherwise of value to the owner; things growing on or affixed to, or found on land, or part of or affixed to any building; electricity, gas and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence reflect or record secret scientific, technical, merchandising production or management information, designed process, procedure, formula, invention or improvement.

(50) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

(51) "Public place" means any place to which the public or any substantial group thereof has access.

(52) "Public servant" means any officer or employee of government, including but not limited to, legislators, judges, and firemen, and any person participating as a juror, advisor, consultant, administrator, executor, guardian or court appointed fiduciary; but the term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

(53) "Purposely"—A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be pre-

vented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(54) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function or process of any bodily member or organ and includes serious mental illness or impairment.

(55) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(56) "Sexual intercourse" means penetration of the vulva, anus or mouth of one person by the penis of another person, or penetration of the vulva or anus of one person by any body member of another person or penetration of the vulva, or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(57) "Solicit" or solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(58) "State" or "this state" means the state of Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(59) "Statute" means any act of the legislature of this state.

(60) "Stolen property" means property over which control has been obtained by theft.

(61) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(62) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(63) "Threat" means a menace, however communicated to:

- (a) inflict physical harm on the person threatened or any other person or on property; or
- (b) subject any person to physical confinement or restraint; or
- (c) commit any criminal offense; or
- (d) accuse any person of criminal offense; or

(e) expose any person to hatred, contempt or ridicule; or

(f) harm the credit or business repute of any person; or

(g) reveal any information sought to be concealed by the person threatened; or

(h) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(64) (a) "Value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars (\$150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars (\$150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or substance

which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding.

(68) "Without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping, to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old.

94-2-102. Voluntary Act.

A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing. Possession is a voluntary act if the offender knowingly procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have been able to terminate his control.

94-2-103. General Requirements Of Criminal Act And Mental State.

(1) A person is not guilty of an offense, other than an offense which involves absolute liability unless, with respect to each element described by the statute defining the offense, he acts while having one (1) of the mental states described in sections 94-2-101 (28), 94-2-101 (32) and 94-2-101 (53).

(2) If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such.

(4) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or

otherwise made reasonably available to him, and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him; or

(b) he acts in reliance upon a statute which later is determined to be invalid; or

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation or order defining the offense, made by public officer or agency legally authorized to interpret such statute.

(5) If a person's reasonable belief is a defense under subsection (4) of this section, nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense.

94-2-104. Absolute Liability.

A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in 94-2-101 (28), 94-2-101 (32) and 94-2-101 (53) only if the offense is punishable by a fine not exceeding five hundred dollars (\$500), and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

94-2-105. Causal Relationship Between—Conduct And Result.

(1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific statute defining the offense are satisfied.

(2) If purposely or knowingly causing a result is an element of an offense, and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the result differs from that contemplated only in the respect that a different person or different property is affected, or that the injury or harm caused is less than contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or

occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense, and the result is not within the risk of which the offender is aware, or should be aware, either element can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected, or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

94-2-106. Accountability For Conduct Of Another.

A person is responsible for conduct which is an element of an offense, if the conduct is either that of the person himself, or that of another and he is legally accountable for such conduct as provided in section 94-2-107, or both.

94-2-107. When Accountability Exists.

A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person; or

(2) the statute defining the offense makes him so accountable; or

(3) either before or during the commission of an offense, and with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. However, a person is not so accountable if:

(a) he is a victim of the offense committed unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, he terminates his effort to promote or facilitate such commission and does one of the following: wholly deprives his prior efforts of effectiveness in such commission, or gives timely warning to the proper law enforcement authorities, or otherwise makes proper effort to prevent the commission of the offense.

94-2-108. Separate Conviction Of Person Accountable.

A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable, although the other person claimed to have committed the offense has not been prosecuted or convicted, or has been convicted of a different offense or is not amenable to justice, or has been acquitted.

94-2-109. Responsibility.

(1) No person is capable of committing any offense unless he has attained his sixteenth birthday at the time the act in question was committed. Any person who has not yet attained his eighteenth birthday shall be subject to the law as provided in title 10, chapter 6, R.C.M. 1947.

(2) A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him or his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

94-2-110. Substitutes For Negligence And Knowledge.

When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

94-2-111. Consent As A Defense.

(1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(b) by reason of youth, mental disease or defect or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) it is induced by force, duress or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

94-2-112. Criminal Responsibility Of Corporations.

(1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor, and is defined by sections 94-6-307, 94-6-308, 94-6-311, 94-6-312, 94-6-313, 94-8-108, 94-8-109, 94-8-111, 94-8-112, 94-8-113 of this code, or is defined by another statute which clearly indicates a legislative purpose to impose liability on a corporation; and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute, concerning the corporation's accountability for certain agents or under certain circumstances, is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed, by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof, that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense, is a defense to a prosecution for any offense to which subsection (1) (a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "Agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation.

(b) "High managerial agent" means an officer of the corporation, or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

94-2-113. Accountability For Conduct Of Corporation.

(1) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed, to the same extent as if the conduct were performed in his own name or behalf.

(2) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual

upon conviction of such offense, although only a lesser or different punishment is authorized for the corporation.

CHAPTER 3: JUSTIFIABLE USE OF FORCE: EXONERATION.**94-3-101. Definitions.**

(1) "Forceful felony" means any felony which involves the use or threat of physical force or violence against any individual.

(2) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

94-3-102. Use Of Force In Defense Of Person.

A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another, or to prevent the commission of a forcible felony.

94-3-103. Use Of Force In Defense Of Occupied Structure.

A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

94-3-104. Use Of Force In Defense Of Other Property.

A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's

trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

94-3-105. Use Of Force By Aggressor.

The justification described in the preceding sections of this chapter is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm, and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

94-3-106. Use Of Force To Prevent Escape.

(1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

94-3-107. Use Of Force By Parent.

A parent or an authorized agent of any parent or a guardian, master, or teacher is justified in the use of such force as is reasonable and necessary to restrain or correct his child, ward, apprentice or pupil.

94-3-108. Use Of Force In Resisting Arrest.

A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

94-3-109. Execution Of Death Sentence.

A public servant who, in the exercise of his official duty, puts a person to death pursuant to a sentence of a court of competent jurisdiction, is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence.

94-3-110. Compulsion.

A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm, if he reasonably believes that death or serious bodily harm will be inflicted upon him if he does not perform such conduct.

94-3-111. Entrapment.

A person is not guilty of an offense if his conduct is incited or induced by a public servant, or his agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his agent, merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated.

94-3-112. Affirmative Defense.

A defense of justifiable use of force, based on the provisions of this chapter is an affirmative defense.

CHAPTER 4: INCHOATE OFFENSES.

94-4-101. Solicitation.

(1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

94-4-102. Conspiracy.

(1) A person commits the offense of conspiracy when, with

the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

- (a) has not been prosecuted or convicted; or
- (b) has been convicted of a different offense; or
- (c) is not amenable to justice; or
- (d) has been acquitted; or
- (e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

94-4-103. Attempt.

(1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section, if under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

CHAPTER 5: OFFENSES AGAINST THE PERSON.

Part One: Homicide.

94-5-101. Criminal Homicide.

(1) A person commits the offense of criminal homicide if he purposely, knowingly or negligently causes the death of another human being.

(2) Criminal homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.

94-5-102. Deliberate Homicide.

(1) Except as provided in section 94-5-103 (1) (a), criminal homicide constitutes deliberate homicide if:

- (a) it is committed purposely or knowingly; or
- (b) it is committed while the offender is engaged in or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in section 94-5-105, or by imprisonment in the state prison for any term not to exceed one hundred (100) years.

94-5-103. Mitigated Deliberate Homicide.

(1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for any term not to exceed forty (40) years.

94-5-104. Negligent Homicide.

(1) Criminal homicide constitutes negligent homicide when it is committed negligently.

(2) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-5-105. Sentence Of Death For Deliberate Homicide.

(1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

- (a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison; or
- (b) The defendant was previously convicted of another deliberate homicide; or
- (c) The victim of the deliberate homicide was a peace officer killed while performing his duty; or

(d) The deliberate homicide was committed by means of torture; or

(e) The deliberate homicide was committed by a person lying in wait or ambush; or

(f) The deliberate homicide was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

94-5-106. Aiding Or Soliciting Suicide.

(1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any term not to exceed ten (10) years.

Part Two: Assault.

94-5-201. Assault.

(1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another; or

(b) negligently causes bodily injury to another with a weapon; or

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another whether or not the offender believes the firearm to be loaded.

(2) A person convicted of assault shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-5-202. Aggravated Assault.

(1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

(a) serious bodily injury to another; or

(b) bodily injury to another with a weapon; or

(c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

94-5-203. Intimidation.

(1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or restraint; or

(c) commit any criminal offense; or

(d) accuse any person of an offense; or

(e) expose any person to hatred, contempt, or ridicule; or

(f) take action as a public official against anyone or anything or withhold official action, or cause such action or withholding.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed ten (10) years.

Part Three: Kidnapping.

94-5-301. Unlawful Restraint.

(1) A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains another so as to interfere substantially with his liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed five hundred dollars (\$500), or be imprisoned in the county jail for any term not to exceed six (6) months or both.

94-5-302. Kidnapping.

(1) A person commits the offense of kidnapping if he know-

ingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation, or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-5-303. Aggravated Kidnapping.

(1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation, or by using or threatening to use physical force, with any of the following purposes:

- (a) to hold for ransom or reward, or as a shield or hostage; or
- (b) to facilitate commission of any felony or flight thereafter; or
- (c) to inflict bodily injury on or to terrorize the victim or another; or
- (d) to interfere with the performance of any governmental or political function; or
- (e) to hold another in a condition of involuntary servitude.

(2) A person convicted of the offense of aggravated kidnapping shall be punished by death as provided in section 94-5-304, or be imprisoned in the state prison for any term not to exceed one hundred (100) years unless he has voluntarily released the victim, alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-5-304. Sentence Of Death For Aggravated Kidnapping.

A court shall impose the sentence of death following conviction of aggravated kidnapping if it finds that the victim is dead as the result of the criminal conduct unless there are mitigating circumstances.

94-5-305. Custodial Interference.

(1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so, he takes, entices or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

(2) A person convicted of the offense of custodial interference

shall be imprisoned in the state prison for any term not to exceed ten (10) years. A person does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to trial.

Part Four: Robbery.

94-5-401. Robbery.

(1) A person commits the offense of robbery if, in the course of committing a theft, he:

- (a) inflicts bodily injury upon another; or
- (b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or
- (c) commits or threatens immediately to commit any felony, other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft, or in flight after the attempt or commission.

Part Five: Sexual Crimes.

94-5-501. Definitions.

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-5-502. Sexual Assault.

(1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

94-5-503. Sexual Intercourse Without Consent.

(1) A male person who knowingly has sexual intercourse without consent with a female not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

94-5-504. Indecent Exposure.

(1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) A person convicted of the offense of indecent exposure shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-5-505. Deviate Sexual Conduct.

(1) A person who knowingly engages in deviate sexual relations, or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed ten (10) years.

(3) A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

94-5-506. Provisions Generally Applicable To Sexual Crimes (94-5-501 to 94-5-505).

(1) When criminality depends on the victim being less than sixteen (16) years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such

belief shall not be deemed reasonable if the child is less than fourteen (14) years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the extension shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (94-5-502 to 94-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant, and the intoxicating substance was voluntarily and knowingly taken.

Part Six: Offenses Against The Family.**94-5-601. Definitions.**

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-5-602. Prostitution.

(1) A person commits the offense of prostitution if such person:

(a) engages in or agrees or offers to engage in sexual intercourse with another person for compensation; or

(b) loiters in or within view of any public place for the purpose of being hired to engage in sexual intercourse.

(2) A person convicted of prostitution shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-5-603. Promoting Prostitution.

A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business; or

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate; or

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute; or

(d) solicits a person to patronize a prostitute; or

(e) procures a prostitute for a patron; or

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution, or procures or pays for transportation with that purpose; or

(g) leases or otherwise permits a place controlled by the offender alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part, upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self support.

(2) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) Compels another to engage in or promote prostitution.

(b) Promotes prostitution of a child under the age of eighteen (18) years, whether or not he is aware of the child's age.

(c) Promotes the prostitution of his wife, child, ward or any person for whose care, protection or support he is responsible.

(3) A person convicted of promoting prostitution shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(4) Evidence.

On the issue whether a place is a house of prostitution the following, in addition to all other admissible evidence, shall be admissible:

(a) Its general repute; the repute of the persons who reside in or frequent the place; or the frequency, timing and duration of visits by nonresidents.

(b) Testimony of a person against his spouse shall be admissible under this section.

94-5-604. Bigamy.

(1) A person commits the offense of bigamy if, while married, he knowingly contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead; or

(b) the offender and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the offender to be alive; or

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that he is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-5-605. Marrying A Bigamist.

(1) A person commits the offense of marrying a bigamist if he contracts or purports to contract a marriage with another knowing that the other is thereby committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any period not to exceed six (6) months, or both.

94-5-606. Incest.

(1) A person commits the offense of incest if he knowingly marries or cohabits or has sexual intercourse with an ancestor, a descendant, a brother or sister of the whole or half blood. "Cohabit" means to live together under the representation of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationships of parent and child by adoption.

(2) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-5-607. Endangering Welfare Of Children.

(1) A parent, guardian, or other person supervising the welfare of a child less than sixteen (16) years old commits the offense of endangering the welfare of children if he knowingly endangers

the child's welfare by violating a duty of care, protection or support.

(2) A person convicted of endangering welfare of children shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

(3) **Evidence.** On the issue of whether there has been a violation of the duty of care, protection, and support, the following in addition to all other admissible evidence, shall be admissible: cruel treatment, abuse, infliction of unnecessary and cruel punishment, abandonment, neglect, lack of proper medical care, clothing, shelter and food; evidence of past bodily injury.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

94-5-608. Nonsupport.

(1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support;

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of aggravated nonsupport shall be imprisoned in the state prison for any term not to exceed ten (10) years.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of person or persons that the defendant has failed to support.

94-5-609. Unlawful Transactions With Children.

(1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of

majority except as authorized under appropriate city ordinances; or

(b) sells or gives intoxicating substances to a child under the age of majority; or

(c) being a junk dealer, pawnbroker or second hand dealer he receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed one thousand dollars (\$1,000) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-5-610. Unlawful Possession Of Intoxicating Substance By Children.

(1) A person who has not reached the age of majority commits the offense of possession of intoxicating substance if he knowingly has in his possession an intoxicating substance.

(2) A person convicted of the offense of possessing an intoxicating substance shall be fined not to exceed fifty dollars (\$50) or be imprisoned in the county jail for any term not to exceed ten (10) days, or both.

CHAPTER 6: OFFENSES AGAINST PROPERTY.

Part One: Criminal Mischief And Arson.

94-6-101. Definitions.

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-6-102. Criminal Mischief.

(1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages or destroys any property of another without consent; or

(b) without consent tampers with property of another so as to endanger or interfere with persons or property or its use; or

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has

opened, leading in or out of any inclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of the offense of criminal mischief shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of one hundred fifty dollars (\$150), or injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-103. Negligent Arson.

(1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another and thereby negligently:

- (a) places another person in danger of death or bodily injury; or
- (b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender places another person in danger of death or bodily injury, he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-104. Arson.

(1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

- (a) damages or destroys an occupied structure of another without consent; or
- (b) places another person in danger of death or bodily injury.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

94-6-105. Possession Of Explosives.

(1) A person commits the offense of possession of explosives if he possesses, manufactures or transports any explosive compound

or timing or detonating device for use with any explosive compound or incendiary device, and:

- (a) has the purpose to use such explosive or device to commit any offense; or
- (b) knows that another has the purpose to use such explosive or device to commit any offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

Part Two: Criminal Trespass And Burglary.

94-6-201. Definitions.

"Enter Or Remain Unlawfully." A person enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this action.

94-6-202. Criminal Trespass To Vehicles.

(1) A person commits the offense of criminal trespass to vehicles when he purposely or knowingly and without authority enters any vehicle or any part thereof.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-6-203. Criminal Trespass To Property

(1) A person commits the offense of criminal trespass to property if he knowingly:

- (a) enters or remains unlawfully in an occupied structure; or
- (b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed five hundred dollars (\$500)

or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-6-204. Burglary.

(1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains in an occupied structure with the purpose to commit a felony therein, and

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense, or in immediate flight thereafter he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed ten (10) years. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed forty (40) years.

94-6-205. Possession Of Burglary Tools.

(1) A person commits the offense of possession of burglary tools when he knowingly possesses any key, tool, instrument, device, or any explosive, suitable for breaking into an occupied structure or vehicle or any depository designed for the safekeeping of property, or any part thereof with the purpose to commit an offense therewith.

(2) A person convicted of possession of burglary tools shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Part Three: Theft And Related Offenses.

94-6-301. Definitions.

In this part, unless a different meaning plainly is required, the definitions given in chapter, 94-2-101 apply.

94-6-302. Theft.

(1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner, and:

(a) has the purpose of depriving the owner of the property; or

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner, and:

(a) has the purpose of depriving the owner of the property; or

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another, and:

(a) has the purpose of depriving the owner of the property; or

(b) purposely or knowingly uses, conceals or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property.

(4) A person convicted of the offense of theft of property not exceeding one hundred fifty dollars (\$150) in value shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of the offense of theft of property exceeding one hundred fifty dollars (\$150) in value or theft of any commonly domesticated hoofed animal shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-303. Theft Of Lost Or Mislaid Property.

(1) A person who obtains control over lost or mislaid property commits the offense of theft when he:

(a) knows or learns the identity of the owner or knows, or is aware of, or learns of a reasonable method of identifying the owner; and

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a period not to exceed six (6) months.

94-6-304. Theft Of Labor Or Services Or Use Of Property.

(1) A person commits the offense of theft when he obtains the temporary use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-6-305. Unauthorized Use Of Motor Vehicles.

(1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. It is an affirmative defense that the offender reasonably believed that the owner would have consented to the operation had he known of it.

94-6-306. Offender's Interest In The Property.

(1) It is no defense to a charge of theft of property that the offender has an interest therein, when the owner also has an interest to which the offender is not entitled.

(2) It is no defense that theft was from the offender's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

94-6-307. Deceptive Practices.

(1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred; or

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services; or

(c) makes or directs another to make or knowingly accepts a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit; or

(d) obtains, or attempts to obtain property, labor or services by any of the following means:

(i) Using a credit card which was issued to another, without the other's consent.

(ii) Using a credit card that has been revoked or cancelled.

(iii) Using a credit card that has been falsely made, counterfeited, or altered in any material respect.

(iv) Using the pretended number or description of a fictitious credit card.

(v) Using a credit card which has expired provided that credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained, or attempted to be obtained exceeds one hundred fifty dollars (\$150) then the offender shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-308. Deceptive Business Practices.

(1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he purposely or knowingly:

(a) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(b) sells, offers, or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure; or

(d) sells, offers or exposes for sale adulterated commodities;
or

(e) sells, offers or exposes for sale mislabeled commodities;
or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage; or

(b) represented as being another person's produce, though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-6-309. Issuing A Bad Check.

(1) A person commits the offense of issuing a bad check when, with the purpose of obtaining control over property or to secure property, labor or services of another, he issues or delivers a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within five (5) days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme, or if the value of any property, labor or serv-

ices obtained, or attempted to be obtained exceeds one hundred fifty dollars (\$150), he shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-6-310. Forgery.

(1) A person commits the offense of forgery when, with purpose to defraud, he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time, or with different provisions, or of different composition; or

(b) issues or delivers such document or other object knowing it to have been thus made or altered; or

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter or terminate any right, obligation or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes, but is not limited to, one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months or both. If the forgery is part of a common scheme or if the value of the property, labor or services obtained or attempted to be obtained, exceeds one hundred fifty dollars (\$150) the offender shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

94-6-311. Obscuring The Identity Of A Machine.

(1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle or

electrical device, with the purpose to conceal, misrepresent or transfer any such machine, vehicle or electrical device; or

(b) possesses with the purpose to conceal, misrepresent or transfer any such machine, vehicle or device knowing that such serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-6-312. Illegal Branding Or Altering Or Obscuring A Brand.

(1) A person commits the offense of illegal branding or altering or obscuring a brand if he marks or brands any commonly domesticated hoofed animal or removes, covers, alters or defaces any existing mark or brand on any commonly domesticated hoofed animals with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer or prevent identification of said animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed ten (10) years.

9-6-313. Defrauding Creditors.

(1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in section 87-1-201 (37) of the Uniform Commercial Code.

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-6-314. Effect Of Criminal Possession Of Stolen Property.

Possession of stolen property shall not constitute proof of the commission of the offense of theft; such fact shall place a burden on the possessor to remove the effect of such fact as a circumstance to be considered with all other evidence pointing to his guilt.

CHAPTER 7: OFFENSES AGAINST PUBLIC ADMINISTRATION.

Part One: Bribery And Corrupt Influence.

94-7-101. Definitions.

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-7-102. Bribery In Official And Political Matters.

(1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(b) any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(2) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed ten (10) years, and shall forever be disqualified from holding any public office in this state.

94-7-103. Threats And Other Improper Influence In Official And Political Matters.

(1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(b) threatens harm to any public servant with the purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant or party official with the purpose to influence him to violate his duty; or

(d) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication designed to influence the outcome on the basis of considerations other than those authorized by law. It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason; or

(e) as a juror, or officer in charge of a jury, receives or permits to be received any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

(2) A person convicted under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-7-104. Compensation For Past Official Behavior.

(1) A person commits an offense under this section if he knowingly solicits, accepts or agrees to accept any pecuniary benefit it as compensation for having, as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers or agrees to confer compensation, acceptance of which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-105. Gifts To Public Servants By Persons Subject To Their Jurisdiction.

(1) No public servant in any department or agency exercising regulatory function, or conducting inspections or investigations, or carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to

perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority or participating in the enforcement of its decision, shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) **Exceptions.** This section shall not apply to:

(a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional or business contracts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer, or offer, or agree to confer, any benefit prohibited by the foregoing subsections.

(7) A person convicted of an offense under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Part Two: Perjury And Other Falsification In Official Matters.

94-7-201. Definitions.

In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

94-7-202. Perjury.

(1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material.

(2) A person convicted of perjury shall be punished by im-

prisonment in the state prison for any term not to exceed ten (10) years.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification subsequently affected the proceeding.

(6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.

94-7-203. False Swearing.

(1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true, and:

- (a) the falsification occurs in an official proceeding; or
- (b) the falsification is purposely made to mislead a public servant in performing his official function; or
- (c) the statement is one which is required by law to be

sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) to (7) of section 94-7-202 apply to this section.

(3) A person convicted of false swearing shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-204. Unsworn Falsification To Authorities.

(1) A person commits an offense under this section if, with purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true; or

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark or other object which he knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-205. False Alarms To Agencies Of Public Safety.

(1) A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-206. False Reports To Law Enforcement Authorities.

(1) A person commits an offense under this section if he knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another; or

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur;
or

(c) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person convicted under this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-207. Tampering With Witnesses And Informants.

(1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely; or

(b) withhold any testimony, information, document or thing;

or

(c) elude legal process summoning him to testify or supply evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-7-208. Tampering With Or Fabricating Physical Evidence.

(1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he

(a) alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed ten (10) years.

94-7-209. Tampering With Public Records Or Information.

(1) A person commits the offense of tampering with public records or information if he:

(a) knowingly makes a false entry in, or false alteration of, any record, document, legislative bill or enactment, or thing belonging to, or received or issued, or kept by the government for information or record, or required by law to be kept by others for information of the government; or

(b) makes, presents or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (a); or

(c) purposely destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for any term not to exceed ten (10) years.

94-7-210. Impersonating A Public Servant.

(1) A person commits the offense of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Part Three: Obstructing Governmental Operations.

94-7-301. Resisting Arrest.

A person commits the offense of resisting arrest if he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means which creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

94-7-302. Obstructing A Peace Officer Or Other Public Servant.

(1) A person commits the offense of obstructing a peace officer or public servant if he knowingly obstructs, impairs or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-303. Obstructing Justice.

(1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:

- (a) harbors or conceals an offender; or
- (b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law; or
- (c) provides an offender with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
- (d) prevents or obstructs, by means of force, deception or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender; or

(e) suppresses by act of concealment, alteration or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape such official detention.

(3) A person convicted of obstructing justice be:

- (a) imprisoned in the state prison for a term not to exceed

ten (10) years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both, if the offender has been or is liable to be charged with a misdemeanor.

94-7-304. Failure To Aid A Peace Officer.

(1) Where it is reasonable for a peace officer to enlist the cooperation of a person in

(a) effectuating or securing an arrest of another (pursuant to R.C.M. 95-609), or

(b) preventing the commission by another of an offense, a peace officer may order such person to cooperate. A person commits the offense of failure to aid a peace officer if he knowingly refuses to obey such an order.

(2) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-305. Compounding A Felony.

(1) A person commits the offense of compounding a felony if he knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

- (a) refraining from seeking prosecution of a felony; or
- (b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-306. Escape.

(1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail,

or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed twenty (20) years if he escapes from a state prison, county jail or city jail by the use or threat of force, physical violence, weapon or simulated weapon; or

(b) imprisoned in the state prison for a term not to exceed ten (10) years if he:

(i) escapes from a state prison, county jail or city jail; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon or simulated weapon; or

(c) fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both if he commits escape under circumstances other than (a) and (b) of this subsection.

94-7-307. Transferring Illegal Articles Or Unauthorized Communication.

(1) Transferring Illegal Articles,

(a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any article or thing to a person subject to official detention or is transferred any article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed twenty (20) years if he conveys a weapon to a person subject to official detention; or

(ii) fined not to exceed one hundred dollars (\$100) if he conveys any other article or thing to a person subject to official detention or be imprisoned in the county jail for any term not to exceed ten (10) days, or both. This shall not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) Unauthorized Communication.

(a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed one hundred dollars (\$100) or be imprisoned in the county jail for any term not to exceed ten (10) days, or both.

94-7-308. Bail-Jumping.

(1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that he will subsequently appear at a specified time and place, he purposely fails without lawful excuse to appear at that time and place.

(2) This section shall not interfere with the exercise by any court of its power to punish for contempt.

(3) This section shall not apply to a person set at liberty by court order upon condition that he will appear in connection with a charge of having committed a misdemeanor, except it shall apply where the judge has released the defendant on his own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed ten (10) years. In all other cases he shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-309. Criminal Contempt.

(1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior, committed during the sitting of a court, in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority; or

(b) breach of the peace, noise, or other disturbance, directly tending to interrupt a court's proceeding; or

(c) purposely disobeying or refusing any lawful process or other mandate of a court; or

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory; or

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process or notice relative to juries issued pursuant to title 93, chapters 12, 13, 14, 15, 16, 17 and 18, R.C.M. 1947.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

Part Four: Official Misconduct.

94-7-401. Official Misconduct.

(1) A public servant commits the offense of official misconduct when, in his official capacity, he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction; or

(b) knowingly performs an act in his official capacity which he knows is forbidden by law; or

(c) with the purpose to obtain advantage for himself or another, he performs an act in excess of his lawful authority; or

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section, and any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) shall be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all back pay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

Part Five: Treason, Flags and Related Offenses.

94-7-502. Desecration Of Flags.

(1) In this section "flag" means anything which is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of them.

(2) A person commits the offense of desecration of flags if he purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag; or

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered; or

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed ten (10) years.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

94-7-503. Criminal Syndicalism.

(1) "Criminal syndicalism" means the advocacy of crime or malicious damage or injury to property, or violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing advocates or promotes the doctrine of criminal syndicalism; or

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another who purposely thereby to advocate or promote the doctrine of criminal syndicalism, dis-

tributes, sells, publishes, or publicly displays, any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed ten (10) years.

(4) Whoever, being the owner or in possession or control of any premises knowingly permits any assemblage of persons to use such premise for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-7-504. Bringing Armed Men Into The State.

(1) A person commits the offense of bringing armed men into the state when he knowingly brings, or aids in bringing, into this state an armed person or armed body of men for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed men into the state shall be imprisoned in the state prison for a term not to exceed ten (10) years.

CHAPTER 8: OFFENSES AGAINST PUBLIC ORDER.

94-8-101. Disorderly Conduct.

(1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

- (a) quarreling, challenging to fight or fighting; or
- (b) making loud or unusual noises; or
- (c) using threatening, profane or abusive language; or
- (d) discharging firearms; or
- (e) rendering vehicular or pedestrian traffic impassable; or
- (f) rendering the free ingress or egress to public or private places impassable; or
- (g) disturbing or disrupting any lawful assembly or public meeting; or
- (h) transmitting a false report or warning of a fire, impending explosion or other catastrophe in such a place that its occurrence would endanger human life; or
- (i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.

(2) A person convicted of the offense of disorderly conduct shall be fined not to exceed one hundred dollars (\$100) or be imprisoned in the county jail for a term not to exceed ten (10) days, or both.

94-8-102. Failure Of Disorderly Persons To Disperse.

(1) Where two (2) or more persons are engaged in disorderly conduct, a peace officer, judge or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed one hundred dollars (\$100) or be imprisoned in the county jail for a term not to exceed ten (10) days, or both.

94-8-103. Riot.

(1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five (5) or more persons, which act or threat presents a clear and present danger of, or results in, damage to property or injury to persons.

(2) A person convicted of the offense of riot shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-104. Incitement To Riot.

(1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas, or expression of belief, which advocacy or expressions does not urge the commission of an act of immediate violence.

(2) A person convicted of the offense of incitement to riot shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-105. Public Intoxication.

(1) A person commits the offense of public intoxication if he appears in a public place in a state of visible intoxication as a result of the use of alcohol or any dangerous drug and is

- (a) creating a risk to himself or others, or

(b) conducting himself in an offensive manner.

(2) A person convicted of the offense of public intoxication shall be fined not to exceed fifty dollars (\$50) or be imprisoned in the county jail for a term not to exceed ten (10) days, or both.

94-8-106. Cruelty To Animals.

(1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring or killing any animal; carrying any animal in a cruel manner; or

(b) failing to provide an animal in his custody with proper food, drink, or shelter; or

(c) abandoning any helpless animal or abandoning any animal on any highway, railroad or in any other place where it may suffer injury, hunger or exposure or becomes a public charge; or

(d) promoting, sponsoring, conducting or participating in a horse race of more than two (2) miles; or promoting, sponsoring, or conducting or participating in any fight between any animals.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-107. Public Nuisance.

(1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons; or

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage, any public highway or right of way, or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood, or any considerable number of persons (as specified in subsection (1) (a) of this section), is no less a nuisance because the

extent of the annoyance or damage inflicted upon individuals is unequal.

(4) A person convicted of maintaining a public nuisance shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both. Each day of such conduct constitutes a separate offense.

(5) Action to abate a public nuisance.

(a) Every premise upon which a public nuisance is being maintained may be abated, and the persons maintaining such nuisance and the possessor who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney, or any resident of the state.

(b) Upon the filing of the complaint in such action the judge may issue a temporary injunction.

(c) In such action evidence of the general reputation of the premises shall be admissible for the purpose of providing the existence of such nuisance.

(d) If the existence of the nuisance be established an order of abatement shall be entered as part of the judgment in the case. The judge issuing such order may, in his discretion:

(i) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, or destroy them or return them to their rightful ownership; or

(ii) close the premises for any period not to exceed one (1) year and during such period the premises shall remain in the custody of the court; or

(iii) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture and/or discharge of the bond shall be as provided in section 95-1116.

(iv) any combination of the above.

94-8-108. Creating A Hazard.

(1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children, a container having a compartment of more than one and one-half (1½) cubic feet capacity and a door or lid that locks or fastens

automatically when closed and cannot easily be opened from the inside, and fails to remove the door, lid, or locking or fastening device; or

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft or other hole of a depth of four (4) feet or more and a top width of twelve (12) inches or more, and he fails to cover or fence it with a suitable protective construction; or

(c) tampers with an aircraft without the consent of the owner; or

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, he continues to use a steam engine or steam boiler which is in an unsafe condition; or

(e) being a person in the act of game hunting, he acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

(f) deposits any hard substance upon or between any railroad tracks, which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-109. Failure To Yield Party Line.

(1) Any person who fails to relinquish a telephone party line or public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department, or for medical aid or ambulance service, shall be imprisoned for a term not to exceed ten (10) days or fined not to exceed twenty-five dollars (\$25), or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question, or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that he must place an emergency call knowing such pretext to be false, shall be imprisoned for a term not to exceed ten (10) days or fined not to exceed twenty-five dollars (\$25), or both.

(4) Every telephone company doing business in this state

shall print a copy of subsections (1), (2), and (3) of this section in each telephone directory published by it after the effective date of this section.

94-8-110. Obscenity.

(1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene to any one under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) the dominant theme of the material taken as a whole appeals to a prurient interest, that is, a shameful or morbid interest in violence, nudity, sex or excretion; and

(b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and

(c) the material is utterly without redeeming social value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the materials; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

94-8-111. Criminal Defamation.

(1) Defamation matter is anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(2) Whoever with knowledge of its defamatory character, orally, in writing or by any other means, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than six (6) months in the county jail or a fine of not more than five hundred dollars (\$500), or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends; or

(b) the communication is absolutely privileged; or

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; or

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two (2) other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

94-8-112. Bribery In Contests.

(1) A person commits the offense of bribery in contests if he purposely or knowingly offers, confers, or agrees to confer upon another, or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his best efforts in connection with any professional or amateur athletic contest, sporting event or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating or connected with any professional or amateur athletic contest, sporting event or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed five thousand dollars (\$5,000) or be imprisoned in the state prison for a term not to exceed ten (10) years, or both.

94-8-113. Mistreating Prisoners.

(1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

(a) assaults or otherwise injures a prisoner; or

(b) intimidates, threatens, endangers or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from him, or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and imprisoned in the state prison for a term not to exceed ten (10) years.

94-8-114. Privacy In Communications.

(1) A person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) Communicates with any person by telephone with the intent to terrify, intimidate, threaten, harass, annoy or offend, or use any obscene, lewd or profane language or suggest any lewd or lascivious act, or threaten to inflict injury or physical harm to the person or property of any person.

(b) Uses a telephone to attempt to extort money or any other thing of value from any person, or to disturb by repeated telephone calls the peace, quiet or right of privacy of any person at the place where the telephone call or calls were received. The

use of obscene, lewd or profane language or the making of a threat or lewd or lascivious suggestions shall prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy or offend.

(c) Records or causes to be recorded by use of any hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) shall not apply to duly elected or appointed public officials or employees when such transcription or recording is done in the performance of official duty; nor to persons speaking at public meetings or persons given warning of such recording.

(d) Attempts by means of any machine, instrument, contrivance, or in any other manner, reads, or attempts to read any other manner, reads, or attempts to read any message or learn the contents thereof, while the same is being sent over any telegraph line, or learns or attempts to learn the contents of any message, whilst the same is in any telegraph office or is being received thereat or sent therefrom, or who uses or attempts to use, or communicate to others, any information so obtained.

(e) Discloses the contents of a telegraphic message or any part thereof, addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court.

(f) Opens or reads or causes to be read any sealed letter not addressed to himself, without being authorized to do so by either the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letters knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating the privacy in communications shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

Section 2. There is a new section to be numbered 41-118, R.C.M. 1947, which reads as follows:

41-118. Deceived Employees—Action For Damages.

(1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state, through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, or the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees, at the time of, or immediately prior to, such engagement. Failure to state in any advertisement,

proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment, when in fact such strike, lockout, or other trouble then actually exists at such place, shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment, against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

Section 3. Section 95-506, R.C.M. 1947, is amended to read as follows:

"95-506. **Determination of fitness to proceed—effect of finding of unfitness—proceedings if fitness is regained.** (a) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 95-505, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the parties shall have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(b) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (c) of this section, and the court shall commit him to custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of public institutions for so long as such unfitness shall endure. When the court, on its own motion or upon the application of the superintendent of the Montana state hospital, or the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the de-

fendant to be committed to an appropriate institution of the state department of public institutions.

(c) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(d) *The expenses of sending the defendant to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of public institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city, or county bound to provide for and maintain him elsewhere."*

Section 4. There is a new section to be numbered 95-719, R.C.M. 1947, which reads as follows:

95-719. Stop and frisk.

(1) A peace officer may stop any person he observes in circumstances that give the peace officer reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against the person or theft, damage or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(2) A peace officer may stop any person he finds near the scene of an offense that the peace officer has reasonable cause to suspect has just been committed if:

(a) the peace officer has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that the peace officer has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property; and

(b) the peace officer has reasonable cause to suspect the person committed the felony; and

(c) the stop is reasonably necessary to obtain or verify his identity to determine whether to arrest the person for the felony; or the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.

(4) A peace officer who has lawfully stopped a person under this section may:

(a) frisk that person and take other reasonable necessary steps for protection if the peace officer has reasonable cause to suspect that the person is armed and presently dangerous to the peace officer or another person present; and

(b) take possession of any object that the peace officer discovers during the course of the frisk if the peace officer has probable cause to believe the object is a deadly weapon.

(5) A peace officer who has lawfully stopped a person under this section may demand of the person his name and his present or last address.

(6) A peace officer who has lawfully stopped a person under this section shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that he is a peace officer and that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation the person will be released unless he is arrested.

(7) After the authorized purpose of the stop has been accomplished or thirty (30) minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.

Section 5. There is a new section to be numbered 95-1507, R.C.M. 1947, which reads as follows:

95-1507. Sentence Of Imprisonment For Persistent Felony Offender.

(1) A persistent felony offender is an offender who has been previously convicted of a felony and the present offense is a second felony committed on a different occasion than the first.

(2) A persistent felony offender shall be imprisoned in the state prison for a term of not less than five (5) years nor more than one hundred (100) years providing:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence

to a term of imprisonment in excess of one (1) year could have been imposed; and

(b) less than five (5) years have elapsed between the commission of the present offense and either,

(i) the previous felony conviction or

(ii) the offenders released on parole or otherwise from a prison or other commitment imposed as a result of the previous felony conviction; and

(c) the offender was more than twenty-one (21) years old at the time of the commission of the new offense.

(3) A previous felony conviction shall not be considered for the purpose of sentencing under this section if the offender has been pardoned on the grounds of innocence, or if the conviction had been set aside in any post conviction hearing.

Section 6. There is a new section to be numbered 95-1711, R.C.M. 1947, which reads as follows:

95-1711. Effect Of Former Prosecution And Multiple Prosecution.

(1) Definition of terms.

(a) The term "same transaction" includes conduct consisting of:

(i) a series of acts or omissions motivated by a purpose to accomplish a criminal objective, and necessary or incidental to the accomplishment of that objective; or

(ii) a series of acts or omissions motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or the same persons or the property thereof.

(b) An offense is an "included offense" when:

(i) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(ii) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(iii) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(2) Method of prosecution when conduct constitutes more than one offense. When the same transaction may establish the commission of more than one offense, a person charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other; or

(b) one offense consists only of a conspiracy or other form of preparation to commit the other; or

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, and unless the law provides that the specific periods of such conduct constitute separate offenses.

(3) When prosecution barred by former prosecution. Provided the offenses, if more than one, were known to the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charge, and provided the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense than the offense charged which is subsequently set aside in an acquittal of the greater inclusive offense that was charged.

(b) The former prosecution was terminated, after a complaint had been filed on a misdemeanor charge, after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in:

(i) a judgment of conviction which has not been reversed or vacated; or

(ii) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(iii) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

(i) the defendant consents to the termination or waives his right to object to the termination; or

(ii) the trial court, in the exercise of its discretion, finds that the termination is necessary because:

(A) it is physically impossible to proceed with the trial in conformity with law; or

(B) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or

(C) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state; or

(D) the jury is unable to agree upon a verdict; or

(E) false statements of a juror on voir dire prevent a fair trial.

(4) Former prosecution in another jurisdiction—when a bar. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate and/or concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(a) The first prosecution resulted in an acquittal or in a conviction as defined in subsection (3) and the subsequent prosecution is based on an offense arising out of the same transaction.

(b) The former prosecution was terminated, after the complaint has been filed on a misdemeanor charge, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

(5) Former prosecution before court lacking jurisdiction or when fraudulently procured by the defendant. A prosecution is not a bar within the meaning of subsections (3) and (4) under any of the following circumstances:

(a) the former prosecution was before a court which lacked jurisdiction over the defendant or the offenses; or

(b) the former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed; or

(c) the former prosecution resulted in a judgment of conviction which was held invalid in any post-conviction hearing.

Section 7. There is a new section to be numbered 95-1807, R.C.M. 1947, which reads as follows:

95-1807. Compelling Testimony: Immunity From Prosecution.

Before or during trial in any judicial proceeding a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence, in accordance with this section, in any investigation or proceeding he cannot be prosecuted or subjected to any penalty or forfeiture, other than a prosecution or action for perjury or contempt, for or on account of any transaction, matter or thing concerning which he testified or produced evidence.

Section 8. There is a new section to be numbered 95-1808, R.C.M. 1947, which reads as follows:

95-1808. "Witness" And "State" Defined. "Witness" as used in 95-1809 through 95-1811, R.C.M. 1947, shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. The word "state" shall include any territory of the United States and District of Columbia.

Section 9. There is a new section to be numbered 95-2227, R.C.M. 1947, which reads as follows:

95-2227. Effect Of Conviction.

(1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

Section 10. There is a new section to be numbered 95-2228, R.C.M. 1947, which reads as follows:

95-2228. Fines, Costs And Forfeitures, How Disposed Of. All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue, if not otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the said fine or forfeiture is paid to the county treasurer at the time of such payment there shall be filed with the county treasurer, a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action, which statement shall give the title of the cause and be subscribed by the person or officer making such payment.

Section 11. There is a new section to be numbered 95-2229, R.C.M. 1947, which reads as follows:

95-2229. Traffic Fines Collected From Juvenile Offenders — Disposition.

All fines collected by the district courts from children under eighteen (18) years of age for unlawful operation of motor vehicles resulting from traffic summonses issued by the peace officers of the cities, counties, or by highway patrolmen, together with that portion of the fines which is specified in section 75-7903 shall be

retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(a) fines collected as the result of summonses issued by city police officers shall be distributed to the city in which the police officer is employed, and credited to the city general fund;

(b) fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund;

(c) fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer of Montana and by him credited to the general fund of the state;

(d) that portion of the fines, as provided for in section 75-7903, shall be paid to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

Section 12. There is a new section to be numbered 95-3004, R.C.M. 1947, which reads as follows:

95-3004. The Burden In A Homicide Trial.

(a) In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death, and that the death was caused by a criminal agency.

(b) In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances or mitigation, excuse or justification appear.

Section 13. There is a new section to be numbered 95-3012, R.C.M. 1947, which reads as follows:

95-3012. Testimony Of Person Legally Accountable. A conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in section 94-2-106, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the one responsible or legally accountable for the same offense, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, it merely shows the commission of the offense, or the circumstances thereof.

Section 14. There is a new chapter entitled Chapter 31 which reads as follows:

CHAPTER 31: UNIFORM CRIMINAL EXTRADITION ACT

95-3101. Definitions. Where appearing in this act, the term "governor" includes any person performing the functions of gov-

error by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

95-3102. Fugitives From Justice—Duty Of Governor. Subject to the provisions of this act, the provisions of the constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

95-3103. Demand—Form. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, except in cases arising under section 95-3106, and accompanied by a copy of the indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgement of conviction or sentence must be authenticated by the executive authority making the demand.

95-3104. Investigation By Governor. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

95-3105. Extradition Of Persons Imprisoned Or Awaiting Trial In Another State Or Who Have Left The Demanding State Under Compulsion. When it is desired to have returned to this

state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in section 95-3123 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

95-3106. Extradition Of Persons Not Present In Demanding State At Time Of Commission Of Crime. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 95-3103 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

95-3107. Issuance Of Warrant Of Arrest By Governor — Recitals Therein. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

95-3108. Execution Of Warrant—Manner And Place Thereof. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act to the duly authorized agent of the demanding state.

95-3109. Authority Of Arresting Officer. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

95-3110. Rights Of Accused Persons—Application For Writ Of Habeas Corpus. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall be first taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and what he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

95-3111. Penalty For Noncompliance With Preceding Section. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience of the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not more than six (6) months, or both.

95-3112. Confinement Of Accused In Jail When Necessary. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evi-

dence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

95-3113. Arrest Of Accused Before Making Of Requisition. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and except in cases arising under section 95-3106 with having fled from justice, or, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 95-3106, has fled from justice, or with having been convicted of a crime in that state and having escaped from bail, probation, or parole and is believed to be in this state, the judge or magistrate shall issue a warrant to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer charge or complaint and affidavit and a certified copy of the sworn charge or complaint or affidavit upon which the warrant is issued shall be attached to the warrant.

95-3114. Arrest Of Accused Without Warrant Therefor. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one (1) year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter this answer shall be heard as if he had been arrested on a warrant.

95-3115. Commitment To Await Requisition—Bail. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except, in cases arising under section 95-3106 that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty (30) days and specified in

the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

95-3116. Bail—In What Cases—Conditions Of Bond. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state.

95-3117. Extension Of Time Of Commitment Adjournment. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or recommit him for further period of sixty (60) days or a supreme court justice or county judge may again take bail for his appearance and surrender, as provided in section 95-3116, but with a period not to exceed sixty (60) days after the date of such new bond or undertaking.

95-3118. Bail—When Forfeited. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

95-3119. Persons Under Criminal Prosecution In This State At Time Of Requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

95-3120. Guilt Or Innocence Of Accused, When Inquired Into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

95-3121. Alias Warrant Of Arrest. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

95-3122. Fugitives From This State—Duty Of Governors. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the chief executive of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

95-3123. Application For Issuance Of Requisition—By Whom Made—Contents. I. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment

of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the government indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

95-3124. Fugitives From This State—Accounts. When the governor of this state, in the exercise of the authority conferred by section 2, article IV, of the constitution of the United States, or by the laws of this state, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the state treasury.

95-3125. No Fee To Be Paid To Public Officer Procuring Surrender. No compensation, fee or reward of any kind can be paid to or received by a public officer of this state, or other person, for a service rendered in procuring from the governor the demand mentioned in section 95-3124 or for the surrender of the fugitive or for conveying him to this state, or detaining him therein, except as provided for in such section.

95-3126. Receiving Fee For Services In Arresting Fugitives. Every person who violates any of the provisions of section 95-3125 is guilty of a misdemeanor.

95-3127. Immunity From Service Of Process In Certain Civil Actions. A person brought into this state on, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

95-3128. Written Waiver Of Extradition Proceedings. Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 95-3107 and 95-3108 and all other procedure incidental to extradition

proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 95-3110.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality, to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

95-3129. Nonwaiver By This State. Nothing in this act contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person from crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, a sentence or punishment for any crime committed within this state, nor shall any proceedings had under this act which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

95-3130. No Immunity From Other Criminal Prosecutions While In This State. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

Section 15. Section 25-222, R.C.M. 1947, is amended to read as follows:

"25-222. **Penalty for false oath.** Every person who takes a false oath, under the provisions of this chapter, is punishable as provided in sections 94-7-202 and 94-7-203."

Section 16. Section 25-223, R.C.M. 1947, is amended to read as follows:

"25-223. **Penalty for failure to pay over fees.** Every officer

who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is *guilty of a felony*."

Section 17. Section 25-224, R.C.M. 1947, is amended to read as follows:

"25-224. **Penalty for making false report.** Every officer who makes a false report of the fees received by him is guilty of a felony."

Section 18. Section 25-225, R.C.M. 1947, is amended to read as follows:

"25-225. **Penalty for sheriff falsely representing his mileage.** Every sheriff who falsely represents to the board of county commissioners or board of examiners his actual traveling expenses in the performance of any official duty, or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty, is *guilty of a misdemeanor*."

Section 19. Section 25-229, R.C.M. 1947, is amended to read as follows:

"25-229. **Sheriff falsely representing his expenses for boarding prisoners.** Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, or for furnishing food and supplies therefor, or for any service rendered in connection therewith, or presents to said board false items in a claim or false vouchers, or makes any profit whatever out of the board or keeping of prisoners in his custody, and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board, is *guilty of a misdemeanor*."

Section 20. Section 69-1511, R.C.M. 1947, is amended to read as follows:

"69-1511. **Certificate of inspection—penalty for wrongfully issuing certificates of inspection or licenses.** In making an inspection of the boilers and machinery herein provided for, the inspectors may not jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under seal of the inspector of boilers and safety. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments, or grants a license to any person to act as engineer contrary to the provisions of this article, is *guilty of a misdemeanor*. All certificate of inspection, operating certificates and engineer's licenses must be displayed in a conspicuous place in the boiler room."

Section 21. Section 66-1607, R.C.M. 1947, is amended to read as follows:

"66-1607. **Penalties.** The penalties for a violation of any of the provisions of this chapter *shall be a misdemeanor*."

Section 23. Section 85-105, R.C.M. 1947, is amended to read as follows:

"85-105. **Penalties.** The penalty for forging, counterfeiting, or unlawful using of trade-marks is *a misdemeanor*."

Section 23. Section 94-1109, R.C.M. 1947, is renumbered 51-405 and is amended to read as follows:

"51-405. **Penalty for violation of law.** Any person, firm, or corporation violating the provisions of section 51-403, whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars (\$200) nor more than ten thousand dollars (\$10,000) for each offense."

Section 24. Section 94-1113, R.C.M. 1947, is renumbered 51-409, and is amended to read as follows:

"51-409. **Penalty for violation of law.** Any person, firm, or corporation violating the provisions of section 51-407, whether as principal or agent, shall, upon conviction thereof, be fined not less than two hundred dollars (\$200) nor more than ten thousand dollars (\$10,000) for each offense."

Section 25. Section 94-1460, R.C.M. 1947, is renumbered 23-4760, and is amended to read as follows:

"23-4760. **Court having jurisdiction of proceedings.** An application for filing a statement, payment of a claim, or correction of an error or false recital in a statement filed, or an action or proceeding to annul and set aside the election of any person declared elected to an office, or to remove or deprive any person of his office for an offense mentioned in this act, or any petition to excuse any person or candidate in accordance with the power of the court to excuse as provided in section 23-4757, must be made or filed in the district court of the county in which the certificate of his nomination as a candidate for the office to which he is declared nominated or elected is filed, or in which the incumbent resides."

Section 26. Section 94-3104, R.C.M. 1947, is renumbered 94-8-204, and is amended to read as follows:

"94-8-204. **Presumption of possession or use for offensive or aggressive purpose.** Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(a) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy,

by the person in whose possession the machine gun may be found; or

(b) When in the possession of, or used by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or

(c) When the machine gun is of the kind described in section 94-8-208 and has not been registered as in said section required; or

(d) When empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of use in the machine gun are found in the immediate vicinity thereof."

Section 27. Section 94-4209, R.C.M. 1947, is renumbered 80-1912, and is amended to read as follows:

"80-1912. Expense of trial for escape. Whenever a trial takes place of any person under any of the provisions of section 94-7-306, and whenever a prisoner in the state prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of money appropriated for the support of the state prison to the county treasurer of the county where such trial was had."

Section 28. Section 94-9846, R.C.M. 1947, is renumbered 95-3228, and is amended to read as follows:

"95-3228. When publication not necessary. No publication need be made as provided in sections 95-3224, 95-3225, and 95-3226, in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.

2. When the term of imprisonment of the applicant is within ten (10) days of its expiration."

Section 29. The following sections of the Revised Codes of Montana, 1947, are not repealed but are renumbered as follows:

94-401 is renumbered 94-5-611; 94-402 is renumbered 94-5-612; 94-808 is renumbered 16-3607; 94-1104 is renumbered 51-401; 94-1105 is renumbered 51-402; 94-1107 is renumbered 51-403; 94-1108 is renumbered 51-404; 94-1110 is renumbered 51-406; 94-1111 is renumbered 51-407; 94-1112 is renumbered 51-408;

94-1114 is renumbered 51-410; 94-1115 is renumbered 51-411; 94-1116 is renumbered 51-412; 94-1117 is renumbered 51-413; 94-1118 is renumbered 51-414; 94-1401 is renumbered 23-4701; 94-1402 is renumbered 23-4702; 94-1403 is renumbered 23-4703; 94-1404 is renumbered 23-4704; 94-1405 is renumbered 23-4705; 94-1406 is renumbered 23-4706; 94-1407 is renumbered 23-4707; 94-1408 is renumbered 23-4708; 94-1409 is renumbered 23-4709; 94-1410 is renumbered 23-4710; 94-1411 is renumbered 23-4711; 94-1412 is renumbered 23-4712; 94-1413 is renumbered 23-4713; 94-1414 is renumbered 23-4714; 94-1415 is renumbered 23-4715; 94-1416 is renumbered 23-4716; 94-1417 is renumbered 23-4717; 94-1418 is renumbered 23-4718; 94-1419 is renumbered 23-4719; 94-1420 is renumbered 23-4720; 94-1421 is renumbered 23-4721; 94-1422 is renumbered 23-4722; 94-1423 is renumbered 23-4723; 94-1424 is renumbered 23-4724; 94-1425 is renumbered 23-4725; 94-1426 is renumbered 23-4726; 94-1427 is renumbered 23-4727; 94-1428 is renumbered 23-4728; 94-1429 is renumbered 23-4729; 94-1430 is renumbered 23-4730; 94-1431 is renumbered 23-4731; 94-1432 is renumbered 23-4732; 94-1433 is renumbered 23-4733; 94-1434 is renumbered 23-4734; 94-1435 is renumbered 23-4735; 94-1436 is renumbered 23-4736; 94-1437 is renumbered 23-4737; 94-1438 is renumbered 23-4738; 94-1439 is renumbered 23-4739; 94-1440 is renumbered 23-4740; 94-1441 is renumbered 23-4741; 94-1442 is renumbered 23-4742; 94-1443 is renumbered 23-4743; 94-1444 is renumbered 23-4744; 94-1445 is renumbered 23-4745; 94-1446 is renumbered 23-4746; 94-1447 is renumbered 23-4747; 94-1448 is renumbered 23-4748; 94-1449 is renumbered 23-4749; 94-1450 is renumbered 23-4750; 94-1451 is renumbered 23-4751; 94-1452 is renumbered 23-4752; 94-1453 is renumbered 23-4753; 94-1454 is renumbered 23-4754; 94-1455 is renumbered 23-4755; 94-1456 is renumbered 23-4756; 94-1457 is renumbered 23-4757; 94-1458 is renumbered 23-4758; 94-1459 is renumbered 23-4759; 94-1462 is renumbered 23-4761; 94-1463 is renumbered 23-4762; 94-1464 is renumbered 23-4763; 94-1465 is renumbered 23-4764; 94-1466 is renumbered 23-4765; 94-1467 is renumbered 23-4766; 94-1468 is renumbered 23-4767; 94-1469 is renumbered 23-4768; 94-1470 is renumbered 23-4769; 94-1471 is renumbered 23-4770; 94-1472 is renumbered 23-4771; 94-1473 is renumbered 23-4772; 94-1474 is renumbered 23-4773; 94-1475 is renumbered 23-4774; 94-1476 is renumbered 23-4775; 94-2322 is renumbered 15-22-141; 94-2323 is renumbered 15-22-142; 94-2324 is renumbered 15-22-143; 94-2325 is renumbered 15-22-144; 94-2401 is renumbered 94-8-401; 94-2402 is renumbered 94-8-402; 94-2403 is renumbered 94-8-403; 94-2404 is renumbered 94-8-404; 94-2405 is renumbered 94-8-405; 94-2406 is renumbered 94-8-406; 94-2407 is renumbered 94-8-407; 94-2408 is renumbered 94-8-408; 94-2409 is renumbered

94-8-409; 94-2410 is renumbered 94-8-410; 94-2411 is renumbered 94-8-411; 94-2412 is renumbered 94-8-412; 94-2413 is renumbered 94-8-413; 94-2414 is renumbered 94-8-414; 94-2415 is renumbered 94-8-415; 94-2416 is renumbered 94-8-416; 94-2417 is renumbered 94-8-417; 94-2418 is renumbered 94-8-418; 94-2419 is renumbered 94-8-419; 94-2420 is renumbered 94-8-420; 94-2421 is renumbered 94-8-421; 94-2422 is renumbered 94-8-422; 94-2423 is renumbered 94-8-423; 94-2424 is renumbered 94-8-424; 94-2426 is renumbered 94-8-425; 94-2427 is renumbered 94-8-426; 94-2428 is renumbered 94-8-427; 94-2429 is renumbered 94-8-428; 94-2430 is renumbered 94-8-429; 94-2431 is renumbered 94-8-430; 94-2432 is renumbered 94-8-431; 94-3001 is renumbered 94-8-301; 94-3002 is renumbered 94-8-302; 94-3003 is renumbered 94-8-303; 94-3004 is renumbered 94-8-304; 94-3005 is renumbered 94-8-305; 94-3006 is renumbered 94-8-306; 94-3007 is renumbered 94-8-307; 94-3008 is renumbered 94-8-308; 94-3009 is renumbered 94-8-309; 94-3010 is renumbered 94-8-310; 94-3011 is renumbered 94-8-311; 94-3101 is renumbered 94-8-201; 94-3102 is renumbered 94-8-202; 94-3103 is renumbered 94-8-203; 94-3105 is renumbered 94-8-205; 94-3106 is renumbered 94-8-206; 94-3107 is renumbered 94-8-207; 94-3108 is renumbered 94-8-208; 94-3110 is renumbered 94-8-209; 94-3522 is renumbered 46-1720; 94-3525 is renumbered 94-8-210; 94-3526 is renumbered 94-8-211; 94-3527 is renumbered 94-8-212; 94-3527.1 is renumbered 94-8-213; 94-3529 is renumbered 94-8-214; 94-3530 is renumbered 94-8-215; 94-3531 is renumbered 94-8-216; 94-3532 is renumbered 94-8-217; 94-3555 is renumbered 41-1325; 94-3567 is renumbered 46-3001; 94-3568 is renumbered 46-3002; 94-3569 is renumbered 46-3003; 94-3578 is renumbered 94-8-218; 94-3578.1 is renumbered 94-8-219; 94-3578.2 is renumbered 94-8-220; 94-3579 is renumbered 94-8-221; 94-3580 is renumbered 94-8-222; 94-35-109 is renumbered 72-671; 94-35-172 is renumbered 46-247; 94-35-173 is renumbered 46-248; 94-35-174 is renumbered 72-507; 94-35-184 is renumbered 94-8-223; 94-35-185 is renumbered 94-8-224; 94-35-186 is renumbered 94-8-225; 94-35-200 is renumbered 46-3004; 94-35-203 is renumbered 72-672; 94-35-204 is renumbered 46-3005; 94-35-205 is renumbered 46-3006; 94-35-206 is renumbered 46-3007; 94-35-207 is renumbered 46-3008; 94-35-270 is renumbered 3-234; 94-35-271 is renumbered 3-235; 94-35-271.1 is renumbered 3-236; 94-35-271.2 is renumbered 3-237; 94-35-271.3 is renumbered 3-238; 94-35-273 is renumbered 94-8-226; 94-5401 is renumbered 95-2801; 94-5402 is renumbered 95-2802; 94-5403 is renumbered 95-2803; 94-5404 is renumbered 95-2804; 94-5405 is renumbered 95-2805; 94-5406 is renumbered 95-2806; 94-5407 is renumbered 95-2807; 94-5408 is renumbered 95-2808; 94-5409 is renumbered 95-2809; 94-5410 is renumbered 95-2810; 94-5411 is renumbered 95-2811; 94-5412 is renumbered 95-2812; 94-5413 is renumbered 95-2813; 94-5414 is renumbered 95-2814; 94-5415 is renumbered 95-2815; 94-5416 is

renumbered 95-2816; 94-5417 is renumbered 95-2817; 94-5418 is renumbered 95-2818; 94-5419 is renumbered 95-2819; 94-7203 is renumbered 95-2901; 94-7204 is renumbered 95-2902; 94-7206 is renumbered 95-1504(d); 94-7207 is renumbered 95-1504(e); 94-7209 is renumbered 95-3001; 94-7210 is renumbered 95-3002; 94-7901 is renumbered 95-3201; 94-7902 is renumbered 95-3202; 94-8801 is renumbered 95-3010; 94-8802 is renumbered 95-3011; 94-9002 is renumbered 95-1809; 94-9003 is renumbered 95-1810; 94-9004 is renumbered 95-1811; 94-9821 is renumbered 95-3203; 94-9822 is renumbered 95-3204; 94-9823 is renumbered 95-3205; 94-9824 is renumbered 95-3206; 94-9825 is renumbered 95-3207; 94-9826 is renumbered 95-3208; 94-9827 is renumbered 95-3209; 94-9828 is renumbered 95-3210; 94-9829 is renumbered 95-3211; 94-9830 is renumbered 95-3212; 94-9831 is renumbered 95-3213; 94-9832 is renumbered 95-3214; 94-9833 is renumbered 95-3215; 94-9834 is renumbered 95-3216; 94-9835 is renumbered 95-3217; 94-9836 is renumbered 95-3218; 94-9837 is renumbered 95-3219; 94-9838 is renumbered 95-3220; 94-9839 is renumbered 95-3221; 94-9840 is renumbered 95-3222; 94-9841 is renumbered 95-3223; 94-9842 is renumbered 95-3224; 94-9843 is renumbered 95-4225; 94-9844 is renumbered 95-3226; 94-9845 is renumbered 95-3227; 94-9847 is renumbered 95-3229; 94-9848 is renumbered 95-3230; 94-9849 is renumbered 95-3231; 94-9850 is renumbered 95-3232; 94-9851 is renumbered 95-3233; 94-701-1 is renumbered 95-1812; 94-1101-1 is renumbered 95-3131; 94-1101-2 is renumbered 95-3132; 94-1101-3 is renumbered 95-3133; 94-1101-4 is renumbered 95-3134; 94-1101-5 is renumbered 95-3135; and 94-1101-6 is renumbered 95-3136.

Section 30. Section 95-2006, R.C.M. 1947, is repealed and there is substituted a new section to be numbered 95-2006 which reads as follows:

95-2006. Verdict.

(a) **Return.** The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter, or cause to be entered in the minutes. The verdict of the jury must be unanimous.

(b) **Several defendants.** When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

(c) **Poll of jury.** When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(d) **Discharge of jury.** The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

Section 31. Section 95-2206, R.C.M. 1947, is repealed and there is substituted the following sections to be numbered 95-2206, 95-2206.1, 95-2206.2, 95-2206.3, and 95-2206.4 which reads as follows:

95-2206. Sentence.

Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty the court may:

(1) Defer imposition of sentence for a period not to exceed one (1) year for any misdemeanor; for a period not to exceed three (3) years for any felony. The sentencing judge may impose upon the defendant any reasonable restriction or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (a) jail base release;
- (b) jail time not to exceed ninety (90) days;
- (c) conditions for probation;
- (d) restitution;

(e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(f) any combination of the above.

(2) Suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

- (a) jail base release;
- (b) jail time not to exceed (90) days;
- (c) conditions for probation;
- (d) restitution;

(e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(f) any combination of the above.

If any restrictions or conditions are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court shall otherwise order.

(3) Impose a fine as provided by law for the offense.

(4) Commit the defendant to a correctional institution with or without fine by law for the offense.

(5) Impose any combination of subsections (2), (3), or (4) above.

(6) The district court may also impose any of the following restrictions or conditions on the above sentence which it deems necessary to obtain the objective of rehabilitation and the protection of society:

- (a) prohibit the defendant the right to hold public office;
- (b) prohibit the defendant the right to own or carry a dangerous weapon;
- (c) prohibit freedom of association;
- (d) prohibit freedom of movement;
- (e) any other limitation reasonably related to the objectives of rehabilitation or the protection of society.

(7) The judge in the justice court shall not have the authority to restrict an individual's rights as enumerated in subsection (6).

Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with this court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

95-2206.1. Sentence To Death.

When a person is convicted of an offense punishable by death or imprisonment, the court may sentence the offender to death or imprisonment.

95-2206.2. When No Place Of Imprisonment Is Specified.

When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed one (1) year shall be to the county jail.

95-2206.3. When No Penalty Is Specified.

The court in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided, or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed six (6) months in the county jail or a fine not to exceed five hundred dollars (\$500), or both. Where statutes outside the criminal code refer to a subsequently repealed section in title 94 for a penalty, then the penalty shall be a fine not to exceed five hundred dollars (\$500) or imprisonment in the county jail for a term not to exceed six (6) months, or both.

95-2206.4. When No Felony Is Specified.

The court in imposing sentence upon an offender convicted of an offense which is designated as a felony, and no penalty is otherwise provided, may sentence the offender for any term not to exceed ten (10) years in the state prison.

Section 32. Sections 94-101 through 94-103, 94-105 through 94-119, 94-201 through 94-206, 94-301 through 94-306, 94-501 through 94-506, 94-601 through 94-605, 94-701 through 94-705, 94-801 through 94-807, 94-809 through 94-811, 94-901 through 94-909, 4-1001 through 94-1011, 94-1101 through 94-1103, 94-1106, 94-1201 through 94-1209, 94-1301 through 94-1307, 94-1501 through 94-1519, 94-1601 through 94-1617, 94-1701 through 94-1707, 94-1801 through 94-1831, 94-1901 through 94-1904, 94-2001 through 94-2014, 94-2101 through 94-2104, 94-2202, 94-2301 through 94-2321, 94-2501 through 94-2515, 94-2601 through 94-2604, 94-2701 through 94-2726, 94-2801 through 94-2811, 94-2901 through 94-2919, 94-3109, 94-3111, 94-3202 through 94-3208, 94-3210, 94-3211, 94-3301 through 94-3344, 94-3401, 94-3402, 94-3501 through 94-3512, 94-3514 through 94-3521, 94-3523, 94-3524, 94-3528, 94-3533 through 94-3549, 94-3551 through 94-3554, 94-3556 through 94-3566, 94-3570 through 94-3572, 94-3574 through 94-3577, 94-3581 through 94-35-101, 94-35-104 through 94-35-108, 94-35-110 through 94-35-122, 94-35-124 through 94-35-134, 94-35-137 through 94-35-147, 94-35-149 through 94-35-151, 94-35-163 through 94-35-171, 94-35-175, 94-35-177 through 94-35-183, 94-35-187 through 94-35-198, 94-35-201, 94-35-202, 94-35-208 through 94-35-265, 94-35-269, 94-35-272, 94-35-274, 94-35-275, 94-3601 through 94-3619, 94-3701 through 94-3704, 94-3801 through 94-3813, 94-3901 through 94-3920, 94-4001 through 94-4005, 94-4101 through 94-4120, 94-4201 through 94-4208, 94-4301 through 94-4303, 94-4401 through 94-4427, 94-4501, 94-4502, 94-4601 through 94-4607, 94-4701 through 94-4715, 94-4718 through 94-4725, 94-4801, 94-4802, 94-4804, 94-4806, 94-4808, 94-4809, 94-5001 through 94-5005, 94-5101 through 94-5116, 94-5201, 94-5202, 94-5301 through 94-5314, 94-5501 through 94-5516, 94-5701 through 94-5706, 94-6414 through 94-6421, 94-6423

through 94-6425, 94-6429, 94-6808.1 through 94-6808.5, 94-7208, 94-7211 through 94-7220, 94-7240, 94-7307, 94-8508 through 94-8510, 94-8803, 94-8804, 94-9001, 94-9005 through 94-9007, 94-9201 through 94-9214, 94-9307, 94-9901 through 94-9908, 94-401-1 through 94-401-3, 94-501-1 through 94-501-32, 94-801-1, 94-801-2, 94-1001-1 through 94-1001-11, 95-2006, 95-2206 R.C.M. 1947, and all acts and parts of acts in conflict herewith are repealed.

Section 33. The Montana Criminal Code and all other provisions of this act are effective January 1, 1974, and shall apply to all offenses alleged to have been committed on or after that date. The Montana Criminal Code and all other provisions of this act do not apply to offenses committed prior to its effective date and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this act were not in force. For the purpose of this section, an offense was committed prior to the effective date of this act if any of the elements of the offense occurred prior thereto.

Section 34. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 35. Section 26-110.1, R.C.M. 1947, is amended to read as follows:

"26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-6-102, 94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947."

Section 36. Section 26-110.2, R.C.M. 1947, is amended to read as follows:

"26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections 94-6-102, 94-6-203 and 32-4410, R.C.M. 1947."

Approved: April 4, 1973.

CHAPTER NO. 514

An Act to Amend Sections 69-3502, 69-3503, 69-3504, 69-3504.1, 69-3505, 69-3506, 69-3508, 69-3508.1, 69-3508.2, 69-3510, 69-3512,